

SENATE BILL NO. 202

INTRODUCED BY R. WEBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GUARDIANSHIP AND  
5 CONSERVATORSHIP LAWS; ADOPTING THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND  
6 OTHER PROTECTIVE ARRANGEMENTS ACT; AMENDING SECTIONS 7-4-3004, 19-2-803, 20-5-320,  
7 30-10-103, 40-6-602, 41-3-444, 47-1-104, 47-1-110, 50-5-1305, 50-9-106, 52-3-207, 52-3-803, 52-3-804,  
8 72-1-103, 72-3-917, 72-5-101, 72-5-602, 72-15-301, 72-31-413, AND 72-38-103, MCA; REPEALING SECTIONS  
9 72-5-102, 72-5-104, 72-5-201, 72-5-202, 72-5-211, 72-5-212, 72-5-213, 72-5-221, 72-5-222, 72-5-223, 72-5-224,  
10 72-5-225, 72-5-231, 72-5-233, 72-5-234, 72-5-301, 72-5-302, 72-5-303, 72-5-304, 72-5-305, 72-5-306, 72-5-311,  
11 72-5-312, 72-5-313, 72-5-314, 72-5-315, 72-5-316, 72-5-317, 72-5-318, 72-5-319, 72-5-320, 72-5-321, 72-5-322,  
12 72-5-324, 72-5-325, 72-5-401, 72-5-402, 72-5-403, 72-5-404, 72-5-405, 72-5-406, 72-5-407, 72-5-408, 72-5-409,  
13 72-5-410, 72-5-411, 72-5-412, 72-5-413, 72-5-414, 72-5-415, 72-5-421, 72-5-422, 72-5-423, 72-5-424, 72-5-425,  
14 72-5-426, 72-5-427, 72-5-428, 72-5-429, 72-5-430, 72-5-431, 72-5-432, 72-5-433, 72-5-434, 72-5-435, 72-5-436,  
15 72-5-437, 72-5-438, 72-5-439, 72-5-444, 72-5-445, 72-5-446, 72-5-447, 72-5-448, 72-5-449, AND 72-5-450,  
16 MCA; AND PROVIDING AN APPLICABILITY DATE."

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19  
20 NEW SECTION. **Section 1. Short title.** [Sections 1 through 105] may be cited as the "Uniform  
21 Guardianship, Conservatorship, and Other Protective Arrangements Act".

22  
23 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 105], the following definitions  
24 apply:

25 (1) "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of  
26 age.

27 (2) "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under  
28 [sections 1 through 105].

29 (3) "Adult subject to guardianship" means an adult for whom a guardian has been appointed under  
30 [sections 1 through 105].

1 (4) "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract,  
2 tort, or otherwise.

3 (5) "Conservator" means a person appointed by a court to make decisions with respect to the property  
4 or financial affairs of an individual subject to conservatorship. The term includes a coconservator.

5 (6) "Conservatorship estate" means the property subject to conservatorship under [sections 1 through  
6 105].

7 (7) "Full conservatorship" means a conservatorship that grants the conservator all powers available under  
8 [sections 1 through 105].

9 (8) "Full guardianship" means a guardianship that grants the guardian all powers available under  
10 [sections 1 through 105].

11 (9) "Guardian" means a person appointed by the court to make decisions with respect to the personal  
12 affairs of an individual. The term includes a coguardian but does not include a guardian ad litem.

13 (10) "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs  
14 and best interest of an individual.

15 (11) "Individual subject to conservatorship" means an adult or minor for whom a conservator has been  
16 appointed under [sections 1 through 105].

17 (12) "Individual subject to guardianship" means an adult or minor for whom a guardian has been  
18 appointed under [sections 1 through 105].

19 (13) "Less restrictive alternative" means an approach to meeting an individual's needs which restricts  
20 fewer rights of the individual than would the appointment of a guardian or conservator. The term includes  
21 supported decisionmaking, appropriate technological assistance, appointment of a representative payee, and  
22 appointment of an agent by the individual, including appointment under a health care power of attorney or power  
23 of attorney for finances.

24 (14) "Letters of office" means a record issued by a court certifying a guardian's or conservator's authority  
25 to act.

26 (15) "Limited conservatorship" means a conservatorship that grants the conservator less than all powers  
27 available under [sections 1 through 105], grants powers over only certain property, or otherwise restricts the  
28 powers of the conservator.

29 (16) "Limited guardianship" means a guardianship that grants the guardian less than all powers available  
30 under [sections 1 through 105] or otherwise restricts the powers of the guardian.

1 (17) "Minor" means an unemancipated individual under 18 years of age.

2 (18) "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under  
3 [sections 1 through 105].

4 (19) "Minor subject to guardianship" means a minor for whom a guardian has been appointed under  
5 [sections 1 through 105].

6 (20) "Parent" does not include an individual whose parental rights have been terminated.

7 (21) "Person" means an individual, estate, business or nonprofit entity, public corporation, government  
8 or governmental subdivision, agency, or instrumentality, or other legal entity.

9 (22) "Property" includes tangible and intangible property.

10 (23) "Protective arrangement instead of conservatorship" means a court order entered under [section 91].

11 (24) "Protective arrangement instead of guardianship" means a court order entered under [section 90].

12 (25) "Protective arrangement under [sections 89 through 99]" means a court order entered under [section  
13 90 or 91].

14 (26) "Record", when used as a noun, means information that is inscribed on a tangible medium or that  
15 is stored in an electronic or other medium and is retrievable in perceivable form.

16 (27) "Respondent" means an individual for whom appointment of a guardian or conservator or a  
17 protective arrangement instead of guardianship or conservatorship is sought.

18 (28) "Sign" means, with present intent to authenticate or adopt a record:

19 (a) to execute or adopt a tangible symbol; or

20 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

21 (29) "Standby guardian" means a person appointed by the court under [section 33].

22 (30) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States  
23 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term  
24 includes a federally recognized Indian tribe.

25 (31) "Supported decisionmaking" means assistance from one or more persons of an individual's choosing  
26 in understanding the nature and consequences of potential personal and financial decisions, which enables the  
27 individual to make the decisions, and in communicating a decision once made if consistent with the individual's  
28 wishes.

29

30 NEW SECTION. **Section 3. Subject matter jurisdiction.** (1) Except to the extent jurisdiction is

1 precluded by Title 40, chapter 7, the district court has jurisdiction over a guardianship for a minor domiciled or  
2 present in this state. The court has jurisdiction over a conservatorship or protective arrangement instead of  
3 conservatorship for a minor domiciled or having property in this state.

4 (2) The district court has jurisdiction over a guardianship, conservatorship, or protective arrangement  
5 under [sections 89 through 99] for an adult as provided in Title 72, chapter 5, part 6.

6 (3) After notice is given in a proceeding for a guardianship, conservatorship, or protective arrangement  
7 under [sections 89 through 99] and until termination of the proceeding, the court in which the petition is filed has:

8 (a) exclusive jurisdiction to determine the need for the guardianship, conservatorship, or protective  
9 arrangement;

10 (b) exclusive jurisdiction to determine how property of the respondent must be managed, expended, or  
11 distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent, or other  
12 claimant;

13 (c) nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the  
14 respondent or a question of title concerning the property; and

15 (d) if a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration  
16 of the guardianship or conservatorship.

17 (4) A court that appoints a guardian or conservator or authorizes a protective arrangement under  
18 [sections 89 through 99] has exclusive and continuing jurisdiction over the proceeding until the court terminates  
19 the proceeding or the appointment or protective arrangement expires by its terms.

20

21 **NEW SECTION. Section 4. Transfer of proceeding.** (1) This section does not apply to a guardianship  
22 or conservatorship for an adult that is subject to the transfer provisions of 72-5-624 or 72-5-625.

23 (2) After appointment of a guardian or conservator, the court that made the appointment may transfer  
24 the proceeding to a court in another county in this state or another state if transfer is in the best interest of the  
25 individual subject to the guardianship or conservatorship.

26 (3) If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country  
27 and a petition for guardianship or conservatorship for the same individual is filed in a court in this state, the court  
28 shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline  
29 jurisdiction, whichever is in the best interest of the respondent.

30 (4) A guardian or conservator appointed in another state or country may petition the court for

1 appointment as a guardian or conservator in this state for the same individual if jurisdiction in this state is or will  
2 be established. The appointment may be made on proof of appointment in the other state or foreign country and  
3 presentation of a certified copy of the part of the court record in the other state or country specified by the court  
4 in this state.

5 (5) Notice of hearing on a petition under subsection (4), together with a copy of the petition, must be  
6 given to the respondent, if the respondent is at least 12 years of age at the time of the hearing, and to the persons  
7 that would be entitled to notice if the procedures for appointment of a guardian or conservator under [sections  
8 1 through 105] were applicable. The court shall make the appointment unless it determines the appointment  
9 would not be in the best interest of the respondent.

10 (6) Not later than 14 days after appointment under subsection (5), the guardian or conservator shall give  
11 a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual  
12 is at least 12 years of age, and to all persons given notice of the hearing on the petition.

13

14 **NEW SECTION. Section 5. Venue.** (1) Venue for a guardianship proceeding for a minor is in:

15 (a) the county in which the minor resides or is present at the time the proceeding commences; or

16 (b) the county in which another proceeding concerning the custody or parental rights of the minor is  
17 pending.

18 (2) Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult  
19 is in:

20 (a) the county in which the respondent resides;

21 (b) if the respondent has been admitted to an institution by court order, the county in which the court is  
22 located; or

23 (c) if the proceeding is for appointment of an emergency guardian for an adult, the county in which the  
24 respondent is present.

25 (3) Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

26 (a) the county in which the respondent resides, whether or not a guardian has been appointed in another  
27 county or other jurisdiction; or

28 (b) if the respondent does not reside in this state, in any county in which property of the respondent is  
29 located.

30 (4) If proceedings under [sections 1 through 105] are brought in more than one county, the court of the

1 county in which the first proceeding is brought has the exclusive right to proceed unless the court determines  
2 venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

3  
4 **NEW SECTION. Section 6. Practice in court.** (1) Except as otherwise provided in [sections 1 through  
5 105], the Montana Rules of Evidence and the Montana Rules of Civil Procedure, including the Montana Rules  
6 of Appellate Procedure, govern a proceeding under [sections 1 through 105].

7 (2) If proceedings for a guardianship, conservatorship, or protective arrangement under [sections 89  
8 through 99] for the same individual are commenced or pending in the same court, the proceedings may be  
9 consolidated.

10 (3) A respondent may demand a jury trial in a proceeding under [sections 1 through 105] on the issue  
11 of whether a basis exists for appointment of a guardian or conservator.

12  
13 **NEW SECTION. Section 7. Letters of office.** (1) The court shall issue letters of office to a guardian  
14 on filing by the guardian of an acceptance of appointment.

15 (2) The court shall issue letters of office to a conservator on filing by the conservator of an acceptance  
16 of appointment and filing of any required bond or compliance with any other asset-protection arrangement  
17 required by the court.

18 (3) Limitations on the powers of a guardian or conservator or on the property subject to conservatorship  
19 must be stated on the letters of office.

20 (4) The court at any time may limit the powers conferred on a guardian or conservator. The court shall  
21 issue new letters of office to reflect the limitation. The court shall give notice of the limitation to the guardian or  
22 conservator, individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship  
23 or conservatorship, and any other person the court determines.

24  
25 **NEW SECTION. Section 8. Effect of acceptance of appointment.** On acceptance of appointment,  
26 a guardian or conservator submits to personal jurisdiction of the court in this state in any proceeding relating to  
27 the guardianship or conservatorship.

28  
29 **NEW SECTION. Section 9. Coguardian -- coconservator.** (1) The court at any time may appoint a  
30 coguardian or coconservator to serve immediately or when a designated event occurs.

1 (2) A coguardian or coconservator appointed to serve immediately may act when that coguardian or  
2 coconservator complies with [section 7].

3 (3) A coguardian or coconservator appointed to serve when a designated event occurs may act when:

4 (a) the event occurs; and

5 (b) that coguardian or coconservator complies with [section 7].

6 (4) Unless an order of appointment under subsection (1) or subsequent order states otherwise,  
7 coguardians or coconservators shall make decisions jointly.

8  
9 **NEW SECTION. Section 10. Judicial appointment of successor guardian or successor**

10 **conservator.** (1) The court at any time may appoint a successor guardian or successor conservator to serve  
11 immediately or when a designated event occurs.

12 (2) A person entitled under [section 28 or 39] to petition the court to appoint a guardian may petition the  
13 court to appoint a successor guardian. A person entitled under [section 58] to petition the court to appoint a  
14 conservator may petition the court to appoint a successor conservator.

15 (3) A successor guardian or successor conservator appointed to serve when a designated event occurs  
16 may act as guardian or conservator when:

17 (a) the event occurs; and

18 (b) the successor complies with [section 7].

19 (4) A successor guardian or successor conservator has the predecessor's powers unless otherwise  
20 provided by the court.

21  
22 **NEW SECTION. Section 11. Effect of death, removal, or resignation of guardian or conservator.**

23 (1) Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator,  
24 or when the court under subsection (2) approves a resignation of the guardian or conservator.

25 (2) A guardian or conservator must petition the court to resign. The petition may include a request that  
26 the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation  
27 is approved by the court.

28 (3) Death, removal, or resignation of a guardian or conservator does not affect liability for a previous act  
29 or the obligation to account for:

30 (a) an action taken on behalf of the individual subject to guardianship or conservatorship; or

1 (b) the individual's funds or other property.

2

3 **NEW SECTION. Section 12. Notice of hearing generally.** (1) Except as otherwise provided in  
4 [sections 29, 33, 40, 59, and 93], if notice of a hearing under [sections 1 through 105] is required, the movant shall  
5 give notice of the date, time, and place of the hearing to the person to be notified unless otherwise ordered by  
6 the court for good cause. Except as otherwise provided in [sections 1 through 105], notice must be given in  
7 compliance with Rule 4 of the Montana Rules of Civil Procedure at least 14 days before the hearing.

8 (2) Proof of notice of a hearing under [sections 1 through 105] must be made before or at the hearing  
9 and filed in the proceeding.

10 (3) Notice of a hearing under [sections 1 through 105] must be in at least 16-point font, in plain language,  
11 and, to the extent feasible, in a language in which the person to be notified is proficient.

12

13 **NEW SECTION. Section 13. Waiver of notice.** (1) Except as otherwise provided in subsection (2), a  
14 person may waive notice under [sections 1 through 105] in a record signed by the person or person's attorney  
15 and filed in the proceeding.

16 (2) A respondent, individual subject to guardianship, individual subject to conservatorship, or individual  
17 subject to a protective arrangement under [sections 89 through 99] may not waive notice under [sections 1  
18 through 105].

19

20 **NEW SECTION. Section 14. Guardian ad litem.** The court at any time may appoint a guardian ad litem  
21 for an individual if the court determines the individual's interest otherwise would not be adequately represented.  
22 If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests.  
23 The guardian ad litem may not be the same individual as the attorney representing the respondent. The court  
24 shall state the duties of the guardian ad litem and the reasons for the appointment.

25

26 **NEW SECTION. Section 15. Request for notice.** (1) A person may file with the court a request for  
27 notice under [sections 1 through 105] if the person is:

28 (a) not otherwise entitled to notice; and

29 (b) interested in the welfare of a respondent, individual subject to guardianship or conservatorship, or  
30 individual subject to a protective arrangement under [sections 89 through 99].



1 (2) A request under subsection (1) must include a statement showing the interest of the person making  
2 the request and the address of the person or an attorney for the person to whom notice is to be given.

3 (3) If the court approves a request under subsection (1), the court shall give notice of the approval to the  
4 guardian or conservator, if one has been appointed, or the respondent if no guardian or conservator has been  
5 appointed.

6  
7 **NEW SECTION. Section 16. Disclosure of bankruptcy or criminal history.** (1) Before accepting  
8 appointment as a guardian or conservator, a person shall disclose to the court whether the person:

9 (a) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

10 (b) been convicted of:

11 (i) a felony;

12 (ii) a crime involving dishonesty, neglect, violence, or use of physical force; or

13 (iii) other crime relevant to the functions the individual would assume as guardian or conservator.

14 (2) A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator  
15 knows has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force,  
16 or other crime relevant to the functions the agent is being engaged to perform promptly shall disclose that  
17 knowledge to the court.

18 (3) If a conservator engages or anticipates engaging an agent to manage finances of the individual  
19 subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency, or  
20 receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

21  
22 **NEW SECTION. Section 17. Multiple nominations.** If a respondent or other person makes more than  
23 one nomination of a guardian or conservator, the latest in time governs.

24  
25 **NEW SECTION. Section 18. Compensation and expenses -- in general -- assignment of public**  
26 **defender.** (1) Unless otherwise compensated or reimbursed, an attorney for a respondent in a proceeding under  
27 [sections 1 through 105] is entitled to reasonable compensation for services and reimbursement of reasonable  
28 expenses from the property of the respondent.

29 (2) Unless otherwise compensated or reimbursed, an attorney or other person whose services resulted  
30 in an order beneficial to an individual subject to guardianship or conservatorship or for whom a protective

1 arrangement under [sections 89 through 99] was ordered is entitled to reasonable compensation for services and  
2 reimbursement of reasonable expenses from the property of the individual.

3 (3) The court must approve compensation and expenses payable under this section before payment.  
4 Approval is not required before a service is provided or an expense is incurred.

5 (4) If the court dismisses a petition under [sections 1 through 105] and determines the petition was filed  
6 in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the  
7 petitioner.

8 (5) The court may order the office of state public defender, provided for in 2-15-1029, to assign counsel  
9 pursuant to the Montana Public Defender Act, Title 47, chapter 1, to a person who is entitled to assistance of  
10 counsel under [sections 1 through 105] but is unable to retain private counsel because of financial inability,  
11 pending a determination of eligibility pursuant to 47-7-111.

12  
13 **NEW SECTION. Section 19. Compensation of guardian or conservator.** (1) Subject to court  
14 approval, a guardian is entitled to reasonable compensation for services as guardian and to reimbursement for  
15 room, board, clothing, and other appropriate expenses advanced for the benefit of the individual subject to  
16 guardianship. If a conservator, other than the guardian or a person affiliated with the guardian, is appointed for  
17 the individual, reasonable compensation and reimbursement to the guardian may be approved and paid by the  
18 conservator without court approval.

19 (2) Subject to court approval, a conservator is entitled to reasonable compensation for services and  
20 reimbursement for appropriate expenses from the property of the individual subject to conservatorship.

21 (3) In determining reasonable compensation for a guardian or conservator, the court, or a conservator  
22 in determining reasonable compensation for a guardian as provided in subsection (1), shall consider:

- 23 (a) the necessity and quality of the services provided;  
24 (b) the experience, training, professional standing, and skills of the guardian or conservator;  
25 (c) the difficulty of the services performed, including the degree of skill and care required;  
26 (d) the conditions and circumstances under which a service was performed, including whether the  
27 service was provided outside regular business hours or under dangerous or extraordinary conditions;  
28 (e) the effect of the services on the individual subject to guardianship or conservatorship;  
29 (f) the extent to which the services provided were or were not consistent with the guardian's plan under  
30 [section 53] or conservator's plan under [section 75]; and

1 (g) the fees customarily paid to a person that performs a like service in the community.

2 (4) A guardian or conservator need not use personal funds of the guardian or conservator for the  
3 expenses of the individual subject to guardianship or conservatorship.

4 (5) If an individual subject to guardianship or conservatorship seeks to modify or terminate the  
5 guardianship or conservatorship or remove the guardian or conservator, the court may order compensation to  
6 the guardian or conservator for time spent opposing modification, termination, or removal only to the extent the  
7 court determines the opposition was reasonably necessary to protect the interest of the individual subject to  
8 guardianship or conservatorship.

9

10 **NEW SECTION. Section 20. Liability of guardian or conservator for act of individual subject to**  
11 **guardianship or conservatorship.** A guardian or conservator is not personally liable to another person solely  
12 because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship  
13 or conservatorship.

14

15 **NEW SECTION. Section 21. Petition after appointment for instruction or ratification.** (1) A guardian  
16 or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular  
17 act related to the guardianship or conservatorship.

18 (2) On notice and hearing on a petition under subsection (1), the court may give an instruction and issue  
19 an appropriate order.

20

21 **NEW SECTION. Section 22. Third-party acceptance of authority of guardian or conservator.** (1)  
22 A person may not recognize the authority of a guardian or conservator to act on behalf of an individual subject  
23 to guardianship or conservatorship if:

24 (a) the person has actual knowledge or a reasonable belief that the letters of office of the guardian or  
25 conservator are invalid or the conservator or guardian is exceeding or improperly exercising authority granted  
26 by the court; or

27 (b) the person has actual knowledge that the individual subject to guardianship or conservatorship is  
28 subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or  
29 a person acting for or with the guardian or conservator.

30 (2) A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an

1 individual subject to guardianship or conservatorship if:

2 (a) the guardian's or conservator's proposed action would be inconsistent with [sections 1 through 105];

3 or

4 (b) the person makes, or has actual knowledge that another person has made, a report to law  
5 enforcement or adult protective services or child protective services of the department of public health and human  
6 services stating a good-faith belief that the individual subject to guardianship or conservatorship is subject to  
7 physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person  
8 acting for or with the guardian or conservator.

9 (3) A person that refuses to accept the authority of a guardian or conservator in accordance with  
10 subsection (2) may report the refusal and the reason for refusal to the court. The court on receiving the report  
11 shall consider whether removal of the guardian or conservator or other action is appropriate.

12 (4) A guardian or conservator may petition the court to require a third party to accept a decision made  
13 by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

14

15 **NEW SECTION. Section 23. Use of agent by guardian or conservator.** (1) Except as otherwise  
16 provided in subsection (3), a guardian or conservator may delegate a power to an agent which a prudent guardian  
17 or conservator of comparable skills could delegate prudently under the circumstances if the delegation is  
18 consistent with the guardian's or conservator's fiduciary duties and the guardian's plan under [section 53] or  
19 conservator's plan under [section 75].

20 (2) In delegating a power under subsection (1), the guardian or conservator shall exercise reasonable  
21 care, skill, and caution in:

22 (a) selecting the agent;

23 (b) establishing the scope and terms of the agent's work in accordance with the guardian's plan under  
24 [section 53] or conservator's plan under [section 75];

25 (c) monitoring the agent's performance and compliance with the delegation; and

26 (d) redressing an act or omission of the agent which would constitute a breach of the guardian's or  
27 conservator's duties if done by the guardian or conservator.

28 (3) A guardian or conservator may not delegate all powers to an agent.

29 (4) In performing a power delegated under this section, an agent shall:

30 (a) exercise reasonable care to comply with the terms of the delegation and use reasonable care in the

1 performance of the power; and

2 (b) if the guardian or conservator has delegated to the agent the power to make a decision on behalf of  
3 the individual subject to guardianship or conservatorship, use the same decisionmaking standard the guardian  
4 or conservator would be required to use.

5 (5) By accepting a delegation of a power under subsection (1) from a guardian or conservator, an agent  
6 submits to the personal jurisdiction of the courts of this state in an action involving the agent's performance as  
7 agent.

8 (6) A guardian or conservator that delegates and monitors a power in compliance with this section is not  
9 liable for the decision, act, or omission of the agent.

10

11 **NEW SECTION. Section 24. Temporary substitute guardian or conservator.** (1) The court may  
12 appoint a temporary substitute guardian for an individual subject to guardianship for a period not exceeding 6  
13 months if:

14 (a) a proceeding to remove a guardian for the individual is pending; or

15 (b) the court finds a guardian is not effectively performing the guardian's duties and the welfare of the  
16 individual requires immediate action.

17 (2) The court may appoint a temporary substitute conservator for an individual subject to conservatorship  
18 for a period not exceeding 6 months if:

19 (a) a proceeding to remove a conservator for the individual is pending; or

20 (b) the court finds that a conservator for the individual is not effectively performing the conservator's  
21 duties and the welfare of the individual or the conservatorship estate requires immediate action.

22 (3) Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute  
23 conservator appointed under this section has the powers stated in the order of appointment of the guardian or  
24 conservator. The authority of the existing guardian or conservator is suspended for as long as the temporary  
25 substitute guardian or conservator has authority.

26 (4) The court shall give notice of appointment of a temporary substitute guardian or temporary substitute  
27 conservator, not later than 5 days after the appointment, to:

28 (a) the individual subject to guardianship or conservatorship;

29 (b) the affected guardian or conservator; and

30 (c) in the case of a minor, each parent of the minor and any person currently having care or custody of

1 the minor.

2 (5) The court may remove a temporary substitute guardian or temporary substitute conservator at any  
3 time. The temporary substitute guardian or temporary substitute conservator shall make any report the court  
4 requires.

5  
6 **NEW SECTION. Section 25. Registration of order -- effect.** (1) If a guardian has been appointed in  
7 another state for an individual, and a petition for guardianship for the individual is not pending in this state, the  
8 guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship  
9 order in this state by filing as a foreign judgment, in a court of an appropriate county of this state, certified copies  
10 of the order and letters of office.

11 (2) If a conservator has been appointed in another state for an individual, and a petition for  
12 conservatorship for the individual is not pending in this state, the conservator appointed for the individual in the  
13 other state, after giving notice to the appointing court, may register the conservatorship in this state by filing as  
14 a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship  
15 is located, certified copies of the order of conservatorship, letters of office, and any bond or other asset-  
16 protection arrangement required by the court.

17 (3) On registration under this section of a guardianship or conservatorship order from another state, the  
18 guardian or conservator may exercise in this state all powers authorized in the order except as prohibited by  
19 [sections 1 through 105] and law of this state other than [sections 1 through 105]. If the guardian or conservator  
20 is not a resident of this state, the guardian or conservator may maintain an action or proceeding in this state  
21 subject to any condition imposed by this state on an action or proceeding by a nonresident party.

22 (4) The court may grant any relief available under [sections 1 through 105] and law of this state other  
23 than [sections 1 through 105] to enforce an order registered under this section.

24  
25 **NEW SECTION. Section 26. Grievance against guardian or conservator.** (1) An individual who is  
26 subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to  
27 guardianship or conservatorship, that reasonably believes the guardian or conservator is breaching the guardian's  
28 or conservator's fiduciary duty or otherwise acting in a manner inconsistent with [sections 1 through 105] may file  
29 a grievance in a record with the court.

30 (2) Subject to subsection (3), after receiving a grievance under subsection (1), the court:

1 (a) shall review the grievance and, if necessary to determine the appropriate response, court records  
2 related to the guardianship or conservatorship;

3 (b) shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and  
4 the grievance supports a reasonable belief that:

5 (i) removal of the guardian and appointment of a successor may be appropriate under [section 55];

6 (ii) termination or modification of the guardianship may be appropriate under [section 56];

7 (iii) removal of the conservator and appointment of a successor may be appropriate under [section 86];

8 or

9 (iv) termination or modification of the conservatorship may be appropriate under [section 87]; and

10 (c) may take any action supported by the evidence, including:

11 (i) ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan,  
12 or other information;

13 (ii) appointing a guardian ad litem;

14 (iii) appointing an attorney for the individual subject to guardianship or conservatorship; or

15 (iv) holding a hearing.

16 (3) The court may decline to act under subsection (2) if a similar grievance was filed within the 6 months  
17 preceding the filing of the current grievance and the court followed the procedures of subsection (2) in considering  
18 the earlier grievance.

19

20 **NEW SECTION. Section 27. Basis for appointment of guardian for minor.** (1) A person becomes  
21 a guardian for a minor only on appointment by the court.

22 (2) The court may appoint a guardian for a minor who does not have a guardian if the court finds the  
23 appointment is in the minor's best interest and:

24 (a) each parent of the minor, after being fully informed of the nature and consequences of guardianship,  
25 consents;

26 (b) all parental rights have been terminated; or

27 (c) there is clear-and-convincing evidence that no parent of the minor is willing or able to exercise the  
28 powers the court is granting the guardian.

29

30 **NEW SECTION. Section 28. Petition for appointment of guardian for minor.** (1) A person interested

1 in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.

2 (2) A petition under subsection (1) must state the petitioner's name, principal residence, current street  
3 address, if different, relationship to the minor, interest in the appointment, the name and address of any attorney  
4 representing the petitioner, and, to the extent known, the following:

5 (a) the minor's name, age, principal residence, current street address, if different, and, if different,  
6 address of the dwelling in which it is proposed the minor will reside if the appointment is made;

7 (b) the name and current street address of the minor's parents;

8 (c) the name and address, if known, of each person that had primary care or custody of the minor for  
9 at least 60 days during the 2 years immediately before the filing of the petition or for at least 730 days during the  
10 5 years immediately before the filing of the petition;

11 (d) the name and address of any attorney for the minor and any attorney for each parent of the minor;

12 (e) the reason guardianship is sought and would be in the best interest of the minor;

13 (f) the name and address of any proposed guardian and the reason the proposed guardian should be  
14 selected;

15 (g) if the minor has property other than personal effects, a general statement of the minor's property with  
16 an estimate of its value;

17 (h) whether the minor needs an interpreter, translator, or other form of support to communicate effectively  
18 with the court or understand court proceedings;

19 (i) whether any parent of the minor needs an interpreter, translator, or other form of support to  
20 communicate effectively with the court or understand court proceedings; and

21 (j) whether any other proceeding concerning the care or custody of the minor is pending in any court in  
22 this state or another jurisdiction.

23

24 **NEW SECTION. Section 29. Notice of hearing for appointment of guardian for minor.** (1) If a  
25 petition is filed under [section 28], the court shall schedule a hearing and the petitioner shall:

26 (a) serve notice of the date, time, and place of the hearing, together with a copy of the petition, personally  
27 on each of the following that is not the petitioner:

28 (i) the minor, if the minor will be 12 years of age or older at the time of the hearing;

29 (ii) each parent of the minor or, if there is none, the adult nearest in kinship who can be found with  
30 reasonable diligence;



- 1 (iii) any adult with whom the minor resides;
- 2 (iv) each person that had primary care or custody of the minor for at least 60 days during the 2 years  
3 immediately before the filing of the petition or for at least 730 days during the 5 years immediately before the filing  
4 of the petition; and
- 5 (v) any other person the court determines should receive personal service of notice; and
- 6 (b) give notice under [section 12] of the date, time, and place of the hearing, together with a copy of the  
7 petition, to:
- 8 (i) any person nominated as guardian by the minor, if the minor is 12 years of age or older;
- 9 (ii) any nominee of a parent;
- 10 (iii) each grandparent and adult sibling of the minor;
- 11 (iv) any guardian or conservator acting for the minor in any jurisdiction; and
- 12 (v) any other person the court determines.
- 13 (2) Notice required by subsection (1) must include a statement of the right to request appointment of an  
14 attorney for the minor or object to appointment of a guardian and a description of the nature, purpose, and  
15 consequences of appointment of a guardian.
- 16 (3) The court may not grant a petition for guardianship of a minor if notice substantially complying with  
17 subsection (1)(a) is not served on:
- 18 (a) the minor, if the minor is 12 years of age or older; and
- 19 (b) each parent of the minor, unless the court finds by clear-and-convincing evidence that the parent  
20 cannot with due diligence be located and served or the parent waived, in a record, the right to notice.
- 21 (4) If a petitioner is unable to serve notice under subsection (1)(a) on a parent of a minor or alleges that  
22 the parent waived, in a record, the right to notice under this section, the court shall appoint a visitor who shall:
- 23 (a) interview the petitioner and the minor;
- 24 (b) if the petitioner alleges the parent cannot be located, ascertain whether the parent cannot be located  
25 with due diligence; and
- 26 (c) investigate any other matter relating to the petition the court directs.
- 27
- 28 **NEW SECTION. Section 30. Attorney for minor or parent.** (1) The court shall appoint an attorney to  
29 represent a minor who is the subject of a proceeding under [section 28] if:
- 30 (a) requested by the minor and the minor is 12 years of age or older;

- 1 (b) recommended by a guardian ad litem; or
- 2 (c) the court determines the minor needs representation.
- 3 (2) An attorney appointed under subsection (1) shall:
- 4 (a) make a reasonable effort to ascertain the minor's wishes;
- 5 (b) advocate for the minor's wishes to the extent reasonably ascertainable; and
- 6 (c) if the minor's wishes are not reasonably ascertainable, advocate for the minor's best interest.
- 7 (3) A minor who is the subject of a proceeding under [section 28] may retain an attorney to represent
- 8 the minor in the proceeding.
- 9 (4) A parent of a minor who is the subject of a proceeding under [section 28] may retain an attorney to
- 10 represent the parent in the proceeding.
- 11 (5) The court shall appoint an attorney to represent a parent of a minor who is the subject of a
- 12 proceeding under [section 28] if:
- 13 (a) the parent objects to appointment of a guardian for the minor;
- 14 (b) the court determines that counsel is needed to ensure that consent to appointment of a guardian is
- 15 informed; or
- 16 (c) the court otherwise determines the parent needs representation.
- 17
- 18 **NEW SECTION. Section 31. Attendance and participation at hearing for appointment of guardian**
- 19 **for minor.** (1) The court shall require a minor who is the subject of a hearing under [section 29] to attend the
- 20 hearing and allow the minor to participate in the hearing unless the court determines, by clear-and-convincing
- 21 evidence presented at the hearing or a separate hearing, that:
- 22 (a) the minor consistently and repeatedly refused to attend the hearing after being fully informed of the
- 23 right to attend and, if the minor is 12 years of age or older, the potential consequences of failing to do so;
- 24 (b) there is no practicable way for the minor to attend the hearing;
- 25 (c) the minor lacks the ability or maturity to participate meaningfully in the hearing; or
- 26 (d) attendance would be harmful to the minor.
- 27 (2) Unless excused by the court for good cause, the person proposed to be appointed as guardian for
- 28 a minor shall attend a hearing under [section 29].
- 29 (3) Each parent of a minor who is the subject of a hearing under [section 29] has the right to attend the
- 30 hearing.

1 (4) A person may request permission to participate in a hearing under [section 29]. The court may grant  
2 the request, with or without hearing, on determining that it is in the best interest of the minor who is the subject  
3 of the hearing. The court may impose appropriate conditions on the person's participation.

4  
5 **NEW SECTION. Section 32. Order of appointment -- priority of nominee -- limited guardianship**  
6 **for minor.** (1) After a hearing under [section 29], the court may appoint a guardian for a minor, if appointment  
7 is proper under [section 27], dismiss the proceeding, or take other appropriate action consistent with [sections  
8 1 through 105] or law of this state other than [sections 1 through 105].

9 (2) In appointing a guardian under subsection (1), the following rules apply:

10 (a) The court shall appoint a person nominated as guardian by a parent of the minor in a will or other  
11 record unless the court finds the appointment is contrary to the best interest of the minor.

12 (b) If multiple parents have nominated different persons to serve as guardian, the court shall appoint the  
13 nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none  
14 of the nominees is in the best interest of the minor.

15 (c) If a guardian is not appointed under subsection (2)(a) or (2)(b), the court shall appoint the person  
16 nominated by the minor if the minor is 12 years of age or older unless the court finds that appointment is contrary  
17 to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment  
18 is in the best interest of the minor.

19 (3) In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life,  
20 developing self-reliance of the minor, or for other good cause, the court, at the time of appointment of a guardian  
21 for the minor or later, on its own or on motion of the minor or other interested person, may create a limited  
22 guardianship by limiting the powers otherwise granted by [sections 27 through 37] to the guardian. Following the  
23 same procedure, the court may grant additional powers or withdraw powers previously granted.

24 (4) The court, as part of an order appointing a guardian for a minor, shall state rights retained by any  
25 parent of the minor, which may include contact or visitation with the minor, decisionmaking regarding the minor's  
26 health care, education, or other matter, or access to a record regarding the minor.

27 (5) An order granting a guardianship for a minor must state that each parent of the minor is entitled to  
28 notice that:

29 (a) the guardian has delegated custody of the minor subject to guardianship;

30 (b) the court has modified or limited the powers of the guardian; or

1 (c) the court has removed the guardian.

2 (6) An order granting a guardianship for a minor must identify any person in addition to a parent of the  
3 minor which is entitled to notice of the events listed in subsection (5).

4

5 **NEW SECTION. Section 33. Standby guardian for minor.** (1) A standby guardian appointed under  
6 this section may act as guardian, with all duties and powers of a guardian under [sections 35 and 36], when no  
7 parent of the minor is willing or able to exercise the duties and powers granted to the guardian.

8 (2) A parent of a minor, in a signed record, may nominate a person to be appointed by the court as  
9 standby guardian for the minor. The parent, in a signed record, may state desired limitations on the powers to  
10 be granted the standby guardian. The parent, in a signed record, may revoke or amend the nomination at any  
11 time before the court appoints a standby guardian.

12 (3) The court may appoint a standby guardian for a minor on:

13 (a) petition by a parent of the minor or a person nominated under subsection (2); and

14 (b) finding that no parent of the minor likely will be able or willing to care for or make decisions with  
15 respect to the minor not later than 2 years after the appointment.

16 (4) A petition under subsection (3)(a) must include the same information required under [section 28] for  
17 the appointment of a guardian for a minor.

18 (5) On filing a petition under subsection (3)(a), the petitioner shall:

19 (a) serve a copy of the petition personally on:

20 (i) the minor, if the minor is 12 years of age or older, and the minor's attorney, if any;

21 (ii) each parent of the minor;

22 (iii) the person nominated as standby guardian; and

23 (iv) any other person the court determines; and

24 (b) include with the copy of the petition served under subsection (5)(a) a statement of the right to request  
25 appointment of an attorney for the minor or to object to appointment of the standby guardian, and a description  
26 of the nature, purpose, and consequences of appointment of a standby guardian.

27 (6) A person entitled to notice under subsection (5), not later than 60 days after service of the petition  
28 and statement, may object to appointment of the standby guardian by filing an objection with the court and giving  
29 notice of the objection to each other person entitled to notice under subsection (5).

30 (7) If an objection is filed under subsection (6), the court shall hold a hearing to determine whether a

1 standby guardian should be appointed and, if so, the person that should be appointed. If no objection is filed, the  
2 court may make the appointment.

3 (8) The court may not grant a petition for a standby guardian of the minor if notice substantially complying  
4 with subsection (5) is not served on:

5 (a) the minor, if the minor is 12 years of age or older; and

6 (b) each parent of the minor, unless the court finds by clear-and-convincing evidence that the parent,  
7 in a record, waived the right to notice or cannot be located and served with due diligence.

8 (9) If a petitioner is unable to serve notice under subsection (5) on a parent of the minor or alleges that  
9 a parent of the minor waived the right to notice under this section, the court shall appoint a visitor who shall:

10 (a) interview the petitioner and the minor;

11 (b) if the petitioner alleges the parent cannot be located and served, ascertain whether the parent cannot  
12 be located with due diligence; and

13 (c) investigate any other matter relating to the petition the court directs.

14 (10) If the court finds under subsection (3) that a standby guardian should be appointed, the following  
15 rules apply:

16 (a) The court shall appoint the person nominated under subsection (2) unless the court finds the  
17 appointment is contrary to the best interest of the minor.

18 (b) If the parents have nominated different persons to serve as standby guardian, the court shall appoint  
19 the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of  
20 none of the nominees is in the best interest of the minor.

21 (11) An order appointing a standby guardian under this section must state that each parent of the minor  
22 is entitled to notice, and identify any other person entitled to notice, if:

23 (a) the standby guardian assumes the duties and powers of the guardian;

24 (b) the guardian delegates custody of the minor;

25 (c) the court modifies or limits the powers of the guardian; or

26 (d) the court removes the guardian.

27 (12) Before assuming the duties and powers of a guardian, a standby guardian must file with the court  
28 an acceptance of appointment as guardian and give notice of the acceptance to:

29 (a) each parent of the minor, unless the parent, in a record, waived the right to notice or cannot be  
30 located and served with due diligence;

- 1 (b) the minor, if the minor is 12 years of age or older; and  
2 (c) any person, other than the parent, having care or custody of the minor.

3 (13) A person that receives notice under subsection (12) or any other person interested in the welfare  
4 of the minor may file with the court an objection to the standby guardian's assumption of duties and powers of  
5 a guardian. The court shall hold a hearing if the objection supports a reasonable belief that the conditions for  
6 assumption of duties and powers have not been satisfied.

7  
8 **NEW SECTION. Section 34. Emergency guardian for minor.** (1) On its own, or on petition by a  
9 person interested in a minor's welfare, the court may appoint an emergency guardian for the minor if the court  
10 finds:

11 (a) appointment of an emergency guardian is likely to prevent substantial harm to the minor's health,  
12 safety, or welfare; and

13 (b) no other person appears to have authority and willingness to act in the circumstances.

14 (2) The duration of authority of an emergency guardian for a minor may not exceed 60 days and the  
15 emergency guardian may exercise only the powers specified in the order of appointment. The emergency  
16 guardian's authority may be extended once for not more than 60 days if the court finds that the conditions for  
17 appointment of an emergency guardian in subsection (1) continue.

18 (3) Except as otherwise provided in subsection (4), reasonable notice of the date, time, and place of a  
19 hearing on a petition for appointment of an emergency guardian for a minor must be given to:

20 (a) the minor, if the minor is 12 years of age or older;

21 (b) any attorney appointed under [section 30];

22 (c) each parent of the minor;

23 (d) any person, other than a parent, having care or custody of the minor; and

24 (e) any other person the court determines.

25 (4) The court may appoint an emergency guardian for a minor without notice under subsection (3) and  
26 a hearing only if the court finds from an affidavit or testimony that the minor's health, safety, or welfare will be  
27 substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an  
28 emergency guardian without notice to an unrepresented minor or the attorney for a represented minor, notice of  
29 the appointment must be given not later than 48 hours after the appointment to the individuals listed in subsection  
30 (3). Not later than 5 days after the appointment, the court shall hold a hearing on the appropriateness of the

1 appointment.

2 (5) Appointment of an emergency guardian under this section, with or without notice, is not a  
3 determination that a basis exists for appointment of a guardian under [section 27].

4 (6) The court may remove an emergency guardian appointed under this section at any time. The  
5 emergency guardian shall make any report the court requires.

6  
7 **NEW SECTION. Section 35. Duties of guardian for minor.** (1) A guardian for a minor is a fiduciary.  
8 Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent  
9 regarding the minor's support, care, education, health, safety, and welfare. A guardian shall act in the minor's best  
10 interest and exercise reasonable care, diligence, and prudence.

11 (2) A guardian for a minor shall:

12 (a) be personally acquainted with the minor and maintain sufficient contact with the minor to know the  
13 minor's abilities, limitations, needs, opportunities, and physical and mental health;

14 (b) take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship  
15 or protective arrangement instead of conservatorship if necessary to protect other property of the minor;

16 (c) expend funds of the minor which have been received by the guardian for the minor's current needs  
17 for support, care, education, health, safety, and welfare;

18 (d) conserve any funds of the minor not expended under subsection (2)(c) for the minor's future needs,  
19 but if a conservator is appointed for the minor, pay the funds at least quarterly to the conservator to be conserved  
20 for the minor's future needs;

21 (e) report the condition of the minor and account for funds and other property of the minor in the  
22 guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on  
23 application of a person interested in the minor's welfare;

24 (f) inform the court of any change in the minor's dwelling or address; and

25 (g) in determining what is in the minor's best interest, take into account the minor's preferences to the  
26 extent actually known or reasonably ascertainable by the guardian.

27  
28 **NEW SECTION. Section 36. Powers of guardian for minor.** (1) Except as otherwise limited by court  
29 order, a guardian of a minor has the powers a parent otherwise would have regarding the minor's support, care,  
30 education, health, safety, and welfare.

1 (2) Except as otherwise limited by court order, a guardian for a minor may:

2 (a) apply for and receive funds and benefits otherwise payable for the support of the minor to the minor's  
3 parent, guardian, or custodian under a statutory system of benefits or insurance or any private contract, devise,  
4 trust, conservatorship, or custodianship;

5 (b) unless inconsistent with a court order entitled to recognition in this state, take custody of the minor  
6 and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's  
7 dwelling outside this state;

8 (c) if the minor is not subject to conservatorship, commence a proceeding, including an administrative  
9 proceeding, or take other appropriate action to compel a person to support the minor or make a payment for the  
10 benefit of the minor;

11 (d) consent to health or other care, treatment, or service for the minor; or

12 (e) to the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's  
13 well-being.

14 (3) The court may authorize a guardian for a minor to consent to the adoption of the minor if the minor  
15 does not have a parent.

16 (4) A guardian for a minor may consent to the marriage of the minor if authorized by the court.  
17

18 **NEW SECTION. Section 37. Removal of guardian for minor -- termination of guardianship --**  
19 **appointment of successor.** (1) Guardianship under [sections 1 through 105] for a minor terminates:

20 (a) on the minor's death, adoption, emancipation, or attainment of majority; or

21 (b) when the court finds that the standard in [section 27] for appointment of a guardian is not satisfied,  
22 unless the court finds that:

23 (i) termination of the guardianship would be harmful to the minor; and

24 (ii) the minor's interest in the continuation of the guardianship outweighs the interest of any parent of the  
25 minor in restoration of the parent's right to make decisions for the minor.

26 (2) A minor subject to guardianship or a person interested in the welfare of the minor may petition the  
27 court to terminate the guardianship, modify the guardianship, remove the guardian and appoint a successor  
28 guardian, or remove a standby guardian and appoint a different standby guardian.

29 (3) A petitioner under subsection (2) shall give notice of the hearing on the petition to the minor, if the  
30 minor is 12 years of age or older and is not the petitioner, the guardian, each parent of the minor, and any other



1 person the court determines.

2 (4) The court shall follow the priorities in [section 32(2)] when selecting a successor guardian for a minor.

3 (5) Not later than 30 days after appointment of a successor guardian for a minor, the court shall give  
4 notice of the appointment to the minor subject to guardianship, if the minor is 12 years of age or older, each  
5 parent of the minor, and any other person the court determines.

6 (6) When terminating a guardianship for a minor under this section, the court may issue an order  
7 providing for transitional arrangements that will assist the minor with a transition of custody and is in the best  
8 interest of the minor.

9 (7) A guardian for a minor that is removed shall cooperate with a successor guardian to facilitate  
10 transition of the guardian's responsibilities and protect the best interest of the minor.

11  
12 **NEW SECTION. Section 38. Basis for appointment of guardian for adult.** (1) On petition and after  
13 notice and hearing, the court may:

14 (a) appoint a guardian for an adult if the court finds by clear-and-convincing evidence that:

15 (i) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care  
16 because the respondent is unable to receive and evaluate information or make or communicate decisions, even  
17 with appropriate supportive services, technological assistance, or supported decisionmaking; and

18 (ii) the respondent's identified needs cannot be met by a protective arrangement instead of guardianship  
19 or other less restrictive alternative; or

20 (b) with appropriate findings, treat the petition as one for a conservatorship under [sections 57 through  
21 88] or protective arrangement under [sections 89 through 99], issue any appropriate order, or dismiss the  
22 proceeding.

23 (2) The court shall grant a guardian appointed under subsection (1) only those powers necessitated by  
24 the demonstrated needs and limitations of the respondent and issue orders that will encourage development of  
25 the respondent's maximum self-determination and independence. The court may not establish a full guardianship  
26 if a limited guardianship, protective arrangement instead of guardianship, or other less restrictive alternatives  
27 would meet the needs of the respondent.

28  
29 **NEW SECTION. Section 39. Petition for appointment of guardian for adult.** (1) A person interested  
30 in an adult's welfare, including the adult for whom the order is sought, may petition for appointment of a guardian

1 for the adult.

2 (2) A petition under subsection (1) must state the petitioner's name, principal residence, current street  
3 address, if different, relationship to the respondent, interest in the appointment, the name and address of any  
4 attorney representing the petitioner, and, to the extent known, the following:

5 (a) the respondent's name, age, principal residence, current street address, if different, and, if different,  
6 address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

7 (b) the name and address of the respondent's:

8 (i) spouse or, if the respondent has none, an adult with whom the respondent has shared household  
9 responsibilities for more than 6 months in the 12-month period immediately before the filing of the petition;

10 (ii) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult  
11 nearest in kinship to the respondent who can be found with reasonable diligence; and

12 (iii) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and  
13 with whom the respondent had an ongoing relationship in the 2-year period immediately before the filing of the  
14 petition;

15 (c) the name and current address of each of the following, if applicable:

16 (i) a person responsible for care of the respondent;

17 (ii) any attorney currently representing the respondent;

18 (iii) any representative payee appointed by the social security administration for the respondent;

19 (iv) a guardian or conservator acting for the respondent in this state or in another jurisdiction;

20 (v) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

21 (vi) any fiduciary for the respondent appointed by the department of veterans affairs;

22 (vii) an agent designated under a health care power of attorney in which the respondent is identified as  
23 the principal;

24 (viii) an agent designated under a power of attorney for finances in which the respondent is identified as  
25 the principal;

26 (ix) a person nominated as guardian by the respondent;

27 (x) a person nominated as guardian by the respondent's parent or spouse in a will or other signed record;

28 (xi) a proposed guardian and the reason the proposed guardian should be selected; and

29 (xii) a person known to have routinely assisted the respondent with decisionmaking during the 6 months  
30 immediately before the filing of the petition;

- 1 (d) the reason a guardianship is necessary, including a brief description of:  
2 (i) the nature and extent of the respondent's alleged need;  
3 (ii) any protective arrangement instead of guardianship or other less restrictive alternatives for meeting  
4 the respondent's alleged need which have been considered or implemented;  
5 (iii) if no protective arrangement instead of guardianship or other less restrictive alternatives have been  
6 considered or implemented, the reason they have not been considered or implemented; and  
7 (iv) the reason a protective arrangement instead of guardianship or other less restrictive alternative is  
8 insufficient to meet the respondent's alleged need;  
9 (e) whether the petitioner seeks a limited guardianship or full guardianship;  
10 (f) if the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement  
11 instead of guardianship is not appropriate;  
12 (g) if a limited guardianship is requested, the powers to be granted to the guardian;  
13 (h) the name and current address, if known, of any person with whom the petitioner seeks to limit the  
14 respondent's contact;  
15 (i) if the respondent has property other than personal effects, a general statement of the respondent's  
16 property, with an estimate of its value, including any insurance or pension, and the source and amount of other  
17 anticipated income or receipts; and  
18 (j) whether the respondent needs an interpreter, translator, or other form of support to communicate  
19 effectively with the court or understand court proceedings.  
20

21 **NEW SECTION. Section 40. Notice of hearing for appointment of guardian for adult.** (1) On filing  
22 of a petition under [section 39] for appointment of a guardian for an adult, the court shall set a date, time, and  
23 place for hearing the petition.

24 (2) A copy of a petition under [section 39] and notice of a hearing on the petition must be served  
25 personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing,  
26 including the right to an attorney and to attend the hearing. The notice must include a description of the nature,  
27 purpose, and consequences of granting the petition. The court may not grant the petition if notice substantially  
28 complying with this subsection is not served on the respondent.

29 (3) In a proceeding on a petition under [section 39], the notice required under subsection (2) must be  
30 given to the persons required to be listed in the petition under [section 39(2)(a) through (2)(c)] and any other

1 person interested in the respondent's welfare the court determines. Failure to give notice under this subsection  
2 does not preclude the court from appointing a guardian.

3 (4) After the appointment of a guardian, notice of a hearing on a petition for an order under [sections 38  
4 through 56], together with a copy of the petition, must be given to:

- 5 (a) the adult subject to guardianship;
- 6 (b) the guardian; and
- 7 (c) any other person the court determines.

8  
9 **NEW SECTION. Section 41. Appointment and role of visitor.** (1) On receipt of a petition under  
10 [section 39] for appointment of a guardian for an adult, the court shall appoint a visitor. The visitor must be an  
11 individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

12 (2) A visitor appointed under subsection (1) shall interview the respondent in person and, in a manner  
13 the respondent is best able to understand:

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

17 (b) determine the respondent's views about the appointment sought by the petitioner, including views  
18 about a proposed guardian, the guardian's proposed powers and duties, and the scope and duration of the  
19 proposed guardianship;

20 (c) inform the respondent of the respondent's right to employ and consult with an attorney at the  
21 respondent's expense and the right to request a court-appointed attorney; and

22 (d) inform the respondent that all costs and expenses of the proceeding, including respondent's  
23 attorney's fees, may be paid from the respondent's assets.

24 (3) The visitor appointed under subsection (1) shall:

25 (a) interview the petitioner and proposed guardian, if any;

26 (b) visit the respondent's present dwelling and any dwelling in which it is reasonably believed the  
27 respondent will live if the appointment is made;

28 (c) obtain information from any physician or other person known to have treated, advised, or assessed  
29 the respondent's relevant physical or mental condition; and

30 (d) investigate the allegations in the petition and any other matter relating to the petition the court directs.

- 1 (4) A visitor appointed under subsection (1) promptly shall file a report in a record with the court, which  
2 must include:
- 3 (a) a recommendation whether an attorney should be appointed to represent the respondent;
- 4 (b) a summary of self-care and independent-living tasks the respondent can manage without assistance  
5 or with existing supports, could manage with the assistance of appropriate supportive services, technological  
6 assistance, or supported decisionmaking, and cannot manage;
- 7 (c) a recommendation regarding the appropriateness of guardianship, including whether a protective  
8 arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is  
9 available and:
- 10 (i) if a guardianship is recommended, whether it should be full or limited; and
- 11 (ii) if a limited guardianship is recommended, the powers to be granted to the guardian;
- 12 (d) a statement of the qualifications of the proposed guardian and whether the respondent approves or  
13 disapproves of the proposed guardian;
- 14 (e) a statement whether the proposed dwelling meets the respondent's needs and whether the  
15 respondent has expressed a preference as to residence;
- 16 (f) a recommendation whether a professional evaluation under [section 43] is necessary;
- 17 (g) a statement whether the respondent is able to attend a hearing at the location court proceedings  
18 typically are held;
- 19 (h) a statement whether the respondent is able to participate in a hearing and which identifies any  
20 technology or other form of support that would enhance the respondent's ability to participate; and
- 21 (i) any other matter the court directs.

22

23 **NEW SECTION. Section 42. Appointment and role of attorney for adult.** (1) The court shall appoint  
24 an attorney to represent the respondent in a proceeding for appointment of a guardian for an adult if:

- 25 (a) the respondent requests an appointment;
- 26 (b) the visitor recommends an appointment; or
- 27 (c) the court determines the respondent needs representation.
- 28 (2) An attorney representing the respondent in a proceeding for appointment of a guardian for an adult  
29 shall:
- 30 (a) make reasonable efforts to ascertain the respondent's wishes;

- 1 (b) advocate for the respondent's wishes to the extent reasonably ascertainable; and  
2 (c) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least  
3 restrictive in type, duration, and scope, consistent with the respondent's interests.

4  
5 **NEW SECTION. Section 43. Professional evaluation.** (1) At or before a hearing on a petition for a  
6 guardianship for an adult, the court shall order a professional evaluation of the respondent:

- 7 (a) if the respondent requests the evaluation; or  
8 (b) in other cases, unless the court finds that it has sufficient information to determine the respondent's  
9 needs and abilities without the evaluation.

10 (2) If the court orders an evaluation under subsection (1), the respondent must be examined by a  
11 licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to  
12 evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or  
13 disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting  
14 the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the  
15 report must contain:

- 16 (a) a description of the nature, type, and extent of the respondent's cognitive and functional abilities and  
17 limitations;  
18 (b) an evaluation of the respondent's mental and physical condition and, if appropriate, educational  
19 potential, adaptive behavior, and social skills;  
20 (c) a prognosis for improvement and recommendation for the appropriate treatment, support, or  
21 habilitation plan; and  
22 (d) the date of the examination on which the report is based.

23 (3) The respondent may decline to participate in an evaluation ordered under subsection (1).  
24

25 **NEW SECTION. Section 44. Attendance and rights at hearing.** (1) Except as otherwise provided in  
26 subsection (2), a hearing under [section 40] may not proceed unless the respondent attends the hearing. If it is  
27 not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held,  
28 the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent  
29 or allow the respondent to attend the hearing using real-time audio-visual technology.

30 (2) A hearing under [section 40] may proceed without the respondent in attendance if the court finds by

1 clear-and-convincing evidence that:

2 (a) the respondent consistently and repeatedly has refused to attend the hearing after having been fully  
3 informed of the right to attend and the potential consequences of failing to do so; or

4 (b) there is no practicable way for the respondent to attend and participate in the hearing even with  
5 appropriate supportive services and technological assistance.

6 (3) The respondent may be assisted in a hearing under [section 40] by a person or persons of the  
7 respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports.  
8 If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the  
9 respondent, the court shall make reasonable efforts to provide it.

10 (4) The respondent has a right to choose an attorney to represent the respondent at a hearing under  
11 [section 40].

12 (5) At a hearing held under [section 40], the respondent may:

13 (a) present evidence and subpoena witnesses and documents;

14 (b) examine witnesses, including any court-appointed evaluator and the visitor; and

15 (c) otherwise participate in the hearing.

16 (6) Unless excused by the court for good cause, a proposed guardian shall attend a hearing under  
17 [section 40].

18 (7) A hearing under [section 40] must be closed on request of the respondent and a showing of good  
19 cause.

20 (8) Any person may request to participate in a hearing under [section 40]. The court may grant the  
21 request, with or without a hearing, on determining that the best interest of the respondent will be served. The  
22 court may impose appropriate conditions on the person's participation.

23

24 **NEW SECTION. Section 45. Confidentiality of records.** (1) The existence of a proceeding for or the  
25 existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

26 (a) the respondent or individual subject to guardianship requests the record be sealed; and

27 (b) either:

28 (i) the petition for guardianship is dismissed; or

29 (ii) the guardianship is terminated.

30 (2) An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an

1 attorney designated by the adult, and a person entitled to notice under [section 47(5)] or a subsequent order are  
2 entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under  
3 [section 53] and report under [section 54]. A person not otherwise entitled to access court records under this  
4 subsection for good cause may petition the court for access to court records of the guardianship, including the  
5 guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult  
6 subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of  
7 the adult.

8 (3) A report under [section 41] of a visitor or a professional evaluation under [section 43] is confidential  
9 and must be sealed on filing, but is available to:

10 (a) the court;

11 (b) the individual who is the subject of the report or evaluation, without limitation as to use;

12 (c) the petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of the proceeding;

13 (d) unless the court orders otherwise, an agent appointed under a health care power of attorney or power  
14 of attorney for finances in which the respondent is the principal; and

15 (e) any other person if it is in the public interest or for a purpose the court orders for good cause.

16

17 **NEW SECTION. Section 46. Who may be guardian for adult -- order of priority.** (1) Except as  
18 otherwise provided in subsection (3), the court in appointing a guardian for an adult shall consider persons  
19 qualified to be guardian in the following order of priority:

20 (a) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in  
21 another jurisdiction;

22 (b) a person nominated as guardian by the respondent, including the respondent's most recent  
23 nomination made in a power of attorney;

24 (c) an agent appointed by the respondent under a health care power of attorney;

25 (d) a spouse of the respondent; and

26 (e) a family member or other individual who has shown special care and concern for the respondent.

27 (2) If two or more persons have equal priority under subsection (1), the court shall select as guardian  
28 the person the court considers best qualified. In determining the best qualified person, the court shall consider  
29 the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the  
30 extent to which the person and the respondent have similar values and preferences, and the likelihood the person



1 will be able to perform the duties of a guardian successfully.

2 (3) The court, acting in the best interest of the respondent, may decline to appoint as guardian a person  
3 having priority under subsection (1) and appoint a person having a lower priority or no priority.

4 (4) A person that provides paid services to the respondent, or an individual who is employed by a person  
5 that provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or  
6 is employed to provide paid services to the respondent, may not be appointed as guardian unless:

7 (a) the individual is related to the respondent by blood, marriage, or adoption; or

8 (b) the court finds by clear-and-convincing evidence that the person is the best qualified person available  
9 for appointment and the appointment is in the best interest of the respondent.

10 (5) An owner, operator, or employee of a long-term care facility, as defined in 50-5-101, or of a disability  
11 service provider that provides housing at which the respondent is receiving care may not be appointed as  
12 guardian unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

13  
14 **NEW SECTION. Section 47. Order of appointment for guardian.** (1) A court order appointing a  
15 guardian for an adult must:

16 (a) include a specific finding that clear-and-convincing evidence established that the identified needs of  
17 the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive  
18 alternative, including use of appropriate supportive services, technological assistance, or supported  
19 decisionmaking;

20 (b) include a specific finding that clear-and-convincing evidence established the respondent was given  
21 proper notice of the hearing on the petition;

22 (c) state whether the adult subject to guardianship retains the right to vote and, if the adult does not  
23 retain the right to vote, include findings that support removing that right, which must include a finding that the adult  
24 cannot communicate, with or without support, a specific desire to participate in the voting process; and

25 (d) state whether the adult subject to guardianship retains the right to marry and, if the adult does not  
26 retain the right to marry, include findings that support removing that right.

27 (2) An adult subject to guardianship retains the right to vote unless the order under subsection (1)  
28 includes the statement required by subsection (1)(c). An adult subject to guardianship retains the right to marry  
29 unless the order under subsection (1) includes the findings required by subsection (1)(d).

30 (3) A court order establishing a full guardianship for an adult must state the basis for granting a full

1 guardianship and include specific findings that support the conclusion that a limited guardianship would not meet  
2 the functional needs of the adult subject to guardianship.

3 (4) A court order establishing a limited guardianship for an adult must state the specific powers granted  
4 to the guardian.

5 (5) The court, as part of an order establishing a guardianship for an adult, shall identify any person that  
6 subsequently is entitled to:

7 (a) notice of the rights of the adult under [section 48(2)];

8 (b) notice of a change in the primary dwelling of the adult;

9 (c) notice that the guardian has delegated:

10 (i) the power to manage the care of the adult;

11 (ii) the power to make decisions about where the adult lives;

12 (iii) the power to make major medical decisions on behalf of the adult;

13 (iv) a power that requires court approval under [section 52]; or

14 (v) substantially all powers of the guardian;

15 (d) notice that the guardian will be unavailable to visit the adult for more than 2 months or unavailable  
16 to perform the guardian's duties for more than 1 month;

17 (e) a copy of the guardian's plan under [section 53] and the guardian's report under [section 54];

18 (f) access to court records relating to the guardianship;

19 (g) notice of the death or significant change in the condition of the adult;

20 (h) notice that the court has limited or modified the powers of the guardian; and

21 (i) notice of the removal of the guardian.

22 (6) A spouse and adult children of an adult subject to guardianship are entitled to notice under  
23 subsection (5) unless the court determines notice would be contrary to the preferences or prior directions of the  
24 adult subject to guardianship or not in the best interest of the adult.

25

26 **NEW SECTION. Section 48. Notice of order of appointment -- rights.** (1) A guardian appointed under  
27 [section 46] shall give the adult subject to guardianship and all other persons given notice under [section 40] a  
28 copy of the order of appointment, together with notice of the right to request termination or modification. The order  
29 and notice must be given not later than 14 days after the appointment.

30 (2) Not later than 30 days after appointment of a guardian under [section 46], the court shall give to the

1 adult subject to guardianship, the guardian, and any other person entitled to notice under [section 47(5)] or a  
2 subsequent order a statement of the rights of the adult subject to guardianship and procedures to seek relief if  
3 the adult is denied those rights. The statement must be in at least 16-point font, in plain language, and, to the  
4 extent feasible, in a language in which the adult subject to guardianship is proficient. The statement must notify  
5 the adult subject to guardianship of the right to:

6 (a) seek termination or modification of the guardianship, or removal of the guardian, and choose an  
7 attorney to represent the adult in these matters;

8 (b) be involved in decisions affecting the adult, including decisions about the adult's care, dwelling,  
9 activities, or social interactions, to the extent reasonably feasible;

10 (c) be involved in health care decisionmaking to the extent reasonably feasible and supported in  
11 understanding the risks and benefits of health care options to the extent reasonably feasible;

12 (d) be notified at least 14 days before a change in the adult's primary dwelling or permanent move to a  
13 nursing home, mental health facility, or other facility that places restrictions on the individual's ability to leave or  
14 have visitors unless the change or move is proposed in the guardian's plan under [section 53] or authorized by  
15 the court by specific order;

16 (e) object to a change or move described in subsection (2)(d) and the process for objecting;

17 (f) communicate, visit, or interact with others, including receiving visitors, and making or receiving  
18 telephone calls, personal mail, or electronic communications, including through social media, unless:

19 (i) the guardian has been authorized by the court by specific order to restrict communications, visits, or  
20 interactions;

21 (ii) a protective order or protective arrangement instead of guardianship is in effect that limits contact  
22 between the adult and a person; or

23 (iii) the guardian has good cause to believe restriction is necessary because interaction with a specified  
24 person poses a risk of significant physical, psychological, or financial harm to the adult, and the restriction is:

25 (A) for a period of not more than 7 business days if the person has a family or preexisting social  
26 relationship with the adult; or

27 (B) for a period of not more than 60 days if the person does not have a family or preexisting social  
28 relationship with the adult;

29 (g) receive a copy of the guardian's plan under [section 53] and the guardian's report under [section 54];

30 and

1 (h) object to the guardian's plan or report.

2

3 **NEW SECTION. Section 49. Emergency guardian for adult.** (1) On its own after a petition has been  
4 filed under [section 39], or on petition by a person interested in an adult's welfare, the court may appoint an  
5 emergency guardian for the adult if the court finds:

6 (a) appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical  
7 health, safety, or welfare;

8 (b) no other person appears to have authority and willingness to act in the circumstances; and

9 (c) there is reason to believe that a basis for appointment of a guardian under [section 38] exists.

10 (2) The duration of authority of an emergency guardian for an adult may not exceed 60 days, and the  
11 emergency guardian may exercise only the powers specified in the order of appointment. The emergency  
12 guardian's authority may be extended once for not more than 60 days if the court finds that the conditions for  
13 appointment of an emergency guardian in subsection (1) continue.

14 (3) Immediately on filing of a petition for appointment of an emergency guardian for an adult, the court  
15 shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in  
16 subsection (4), reasonable notice of the date, time, and place of a hearing on the petition must be given to the  
17 respondent, the respondent's attorney, and any other person the court determines.

18 (4) The court may appoint an emergency guardian for an adult without notice to the adult and any  
19 attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health,  
20 safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the  
21 court appoints an emergency guardian without giving notice under subsection (3), the court must:

22 (a) give notice of the appointment not later than 48 hours after the appointment to:

23 (i) the respondent;

24 (ii) the respondent's attorney; and

25 (iii) any other person the court determines; and

26 (b) hold a hearing on the appropriateness of the appointment not later than 5 days after the appointment.

27 (5) Appointment of an emergency guardian under this section is not a determination that a basis exists  
28 for appointment of a guardian under [section 38].

29 (6) The court may remove an emergency guardian appointed under this section at any time. The  
30 emergency guardian shall make any report the court requires.

1  
2           **NEW SECTION. Section 50. Duties of guardian for adult.** (1) A guardian for an adult is a fiduciary.  
3 Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care,  
4 education, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult's  
5 limitations.

6           (2) A guardian for an adult shall promote the self-determination of the adult and, to the extent reasonably  
7 feasible, encourage the adult to participate in decisions, act on the adult's own behalf, and develop or regain the  
8 capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

9           (a) become or remain personally acquainted with the adult and maintain sufficient contact with the adult,  
10 including through regular visitation, to know the adult's abilities, limitations, needs, opportunities, and physical  
11 and mental health;

12           (b) to the extent reasonably feasible, identify the values and preferences of the adult and involve the  
13 adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social  
14 interactions; and

15           (c) make reasonable efforts to identify and facilitate supportive relationships and services for the adult.

16           (3) A guardian for an adult at all times shall exercise reasonable care, diligence, and prudence when  
17 acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:

18           (a) take reasonable care of the personal effects, pets, and service or support animals of the adult and  
19 bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to  
20 protect the adult's property;

21           (b) expend funds and other property of the adult received by the guardian for the adult's current needs  
22 for support, care, education, health, and welfare;

23           (c) conserve any funds and other property of the adult not expended under subsection (3)(b) for the  
24 adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at  
25 least quarterly to the conservator to be conserved for the adult's future needs; and

26           (d) monitor the quality of services, including long-term care services, provided to the adult.

27           (4) In making a decision for an adult subject to guardianship, the guardian shall make the decision the  
28 guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably  
29 harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult  
30 subject to guardianship would make if able, the guardian shall consider the adult's previous or current directions,

1 preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the  
2 guardian.

3 (5) If a guardian for an adult cannot make a decision under subsection (4) because the guardian does  
4 not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian  
5 reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or  
6 personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult.  
7 In determining the best interest of the adult, the guardian shall consider:

8 (a) information received from professionals and persons that demonstrate sufficient interest in the  
9 welfare of the adult;

10 (b) other information the guardian believes the adult would have considered if the adult were able to act;  
11 and

12 (c) other factors a reasonable person in the circumstances of the adult would consider, including  
13 consequences for others.

14 (6) A guardian for an adult immediately shall notify the court if the condition of the adult has changed so  
15 that the adult is capable of exercising rights previously removed.

16  
17 **NEW SECTION. Section 51. Powers of guardian for adult.** (1) Except as limited by court order, a  
18 guardian for an adult may:

19 (a) apply for and receive funds and benefits for the support of the adult, unless a conservator is  
20 appointed for the adult and the application or receipt is within the powers of the conservator;

21 (b) unless inconsistent with a court order, establish the adult's place of dwelling;

22 (c) except as provided in [section 52(4)], consent to health or other care, treatment, or service for the  
23 adult;

24 (d) if a conservator for the adult has not been appointed, commence a proceeding, including an  
25 administrative proceeding, or take other appropriate action to compel another person to support the adult or pay  
26 funds for the adult's benefit;

27 (e) to the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's  
28 well-being; and

29 (f) receive personally identifiable health care information regarding the adult.

30 (2) The court by specific order may authorize a guardian for an adult to consent to the adoption of the

1 adult.

2 (3) The court by specific order may authorize a guardian for an adult to:

3 (a) consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed  
4 under [section 47];

5 (b) petition for divorce, dissolution, or annulment of marriage of the adult or a declaration of invalidity of  
6 the adult's marriage; or

7 (c) support or oppose a petition for divorce, dissolution, or annulment of marriage of the adult or a  
8 declaration of invalidity of the adult's marriage.

9 (4) In determining whether to authorize a power under subsection (2) or (3), the court shall consider  
10 whether the underlying act would be in accordance with the adult's preferences, values, and prior directions and  
11 whether the underlying act would be in the adult's best interest.

12 (5) In exercising a guardian's power under subsection (1)(b) to establish the adult's place of dwelling,  
13 the guardian shall:

14 (a) select a residential setting the guardian believes the adult would select if the adult were able, in  
15 accordance with the decisionmaking standard in [section 50(4) and (5)]. If the guardian does not know and cannot  
16 reasonably determine what setting the adult subject to guardianship probably would choose if able, or the  
17 guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the  
18 welfare or personal or financial interests of the adult, the guardian shall choose in accordance with [section 50(5)]  
19 a residential setting that is consistent with the adult's best interest.

20 (b) in selecting among residential settings, give priority to a residential setting in a location that will allow  
21 the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner  
22 reasonably feasible unless to do so would be inconsistent with the decisionmaking standard in [section 50(4) and  
23 (5)];

24 (c) not later than 30 days after a change in the dwelling of the adult:

25 (i) give notice of the change to the court, the adult, and any person identified as entitled to the notice in  
26 the court order appointing the guardian or a subsequent order; and

27 (ii) include in the notice the address and nature of the new dwelling and state whether the adult received  
28 advance notice of the change and whether the adult objected to the change;

29 (d) establish or move the permanent place of dwelling of the adult to a nursing home, mental health  
30 facility, or other facility that places restrictions on the adult's ability to leave or have visitors only if:

- 1 (i) the establishment or move is in the guardian's plan under [section 53];
- 2 (ii) the court authorizes the establishment or move; or
- 3 (iii) the guardian gives notice of the establishment or move at least 14 days before the establishment or
- 4 move to the adult and all persons entitled to notice under [section 47(5)(b)] or a subsequent order, and no
- 5 objection is filed;
- 6 (e) establish or move the place of dwelling of the adult outside this state only if consistent with the
- 7 guardian's plan and authorized by the court by specific order; and
- 8 (f) take action that would result in the sale of or surrender of the lease to the primary dwelling of the adult
- 9 only if:
- 10 (i) the action is specifically included in the guardian's plan under [section 53];
- 11 (ii) the court authorizes the action by specific order; or
- 12 (iii) notice of the action was given at least 14 days before the action to the adult and all persons entitled
- 13 to the notice under [section 47(5)(b)] or a subsequent order and no objection has been filed.
- 14 (6) In exercising a guardian's power under subsection (1)(c) to make health care decisions, the guardian
- 15 shall:
- 16 (a) involve the adult in decisionmaking to the extent reasonably feasible, including, when practicable,
- 17 by encouraging and supporting the adult in understanding the risks and benefits of health care options;
- 18 (b) defer to a decision by an agent under a health care power of attorney executed by the adult and
- 19 cooperate to the extent feasible with the agent making the decision; and
- 20 (c) take into account:
- 21 (i) the risks and benefits of treatment options; and
- 22 (ii) the current and previous wishes and values of the adult, if known or reasonably ascertainable by the
- 23 guardian.

24

25 **NEW SECTION. Section 52. Special limitations on guardian's power.** (1) Unless authorized by the

26 court by specific order, a guardian for an adult does not have the power to revoke or amend a health care power

27 of attorney or power of attorney for finances executed by the adult. If a health care power of attorney is in effect,

28 unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the

29 guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances

30 is in effect, unless there is a court order to the contrary, a decision by the agent which the agent is authorized to



1 make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall  
2 cooperate with the agent to the extent feasible.

3 (2) A guardian for an adult may not initiate the commitment of the adult to a mental health facility except  
4 in accordance with the state's procedure for involuntary civil commitment.

5 (3) A guardian for an adult may not restrict the ability of the adult to communicate, visit, or interact with  
6 others, including receiving visitors and making or receiving telephone calls, personal mail, or electronic  
7 communications, including through social media, or participating in social activities, unless:

8 (a) authorized by the court by specific order;

9 (b) a protective order or a protective arrangement instead of guardianship is in effect that limits contact  
10 between the adult and a person; or

11 (c) the guardian has good cause to believe restriction is necessary because interaction with a specified  
12 person poses a risk of significant physical, psychological, or financial harm to the adult and the restriction is:

13 (i) for a period of not more than 7 business days if the person has a family or preexisting social  
14 relationship with the adult; or

15 (ii) for a period of not more than 60 days if the person does not have a family or preexisting social  
16 relationship with the adult.

17 (4) A guardian may not consent to the withholding or withdrawal of life-sustaining treatment or to a do  
18 not resuscitate order if the guardian does not have authority to consent pursuant to the Montana Rights of the  
19 Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A guardian  
20 may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to  
21 a do not resuscitate order. The court may not grant that authority if it conflicts with the adult's wishes to the extent  
22 those wishes can be determined. To determine the adult's wishes, the court shall determine by a preponderance  
23 of the evidence if the adult's substituted judgment, as applied to the adult's current circumstances, conflicts with  
24 the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

25  
26 **NEW SECTION. Section 53. Guardian's plan.** (1) A guardian for an adult, not later than 60 days after  
27 appointment and when there is a significant change in circumstances or the guardian seeks to deviate  
28 significantly from the guardian's plan, shall file with the court a plan for the care of the adult. The plan must be  
29 based on the needs of the adult and take into account the best interest of the adult as well as the adult's  
30 preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian. The

1 guardian shall include in the plan:

2 (a) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue  
3 for the adult;

4 (b) social and educational activities the guardian expects to facilitate on behalf of the adult;

5 (c) any person with whom the adult has a close personal relationship or relationship involving regular  
6 visitation and any plan the guardian has for facilitating visits with the person;

7 (d) the anticipated nature and frequency of the guardian's visits and communication with the adult;

8 (e) goals for the adult, including any goal related to the restoration of the adult's rights, and how the  
9 guardian anticipates achieving the goals;

10 (f) whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the  
11 adult's plan; and

12 (g) a statement or list of the amount the guardian proposes to charge for each service the guardian  
13 anticipates providing to the adult.

14 (2) A guardian shall give notice of the filing of the guardian's plan under subsection (1), together with a  
15 copy of the plan, to the adult subject to guardianship, a person entitled to notice under [section 47(5)] or a  
16 subsequent order, and any other person the court determines. The notice must include a statement of the right  
17 to object to the plan and be given not later than 14 days after the filing.

18 (3) An adult subject to guardianship and any person entitled under subsection (2) to receive notice and  
19 a copy of the guardian's plan may object to the plan.

20 (4) The court shall review the guardian's plan filed under subsection (1) and determine whether to  
21 approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an  
22 objection under subsection (3) and whether the plan is consistent with the guardian's duties and powers under  
23 [sections 50 and 51]. The court may not approve the plan until 30 days after its filing.

24 (5) After the guardian's plan filed under this section is approved by the court, the guardian shall provide  
25 a copy of the plan to the adult subject to guardianship, a person entitled to notice under [section 47(5)] or a  
26 subsequent order, and any other person the court determines.

27

28 **NEW SECTION. Section 54. Guardian's report -- monitoring of guardianship.** (1) A guardian for an  
29 adult, not later than 60 days after appointment and at least annually thereafter, shall file with the court a report  
30 in a record regarding the condition of the adult and accounting for funds and other property in the guardian's

- 1 possession or subject to the guardian's control.
- 2 (2) A report under subsection (1) must state or contain:
- 3 (a) the mental, physical, and social condition of the adult;
- 4 (b) the living arrangements of the adult during the reporting period;
- 5 (c) a summary of the supported decisionmaking, technological assistance, medical services, educational
- 6 and vocational services, and other supports and services provided to the adult and the guardian's opinion as to
- 7 the adequacy of the adult's care;
- 8 (d) a summary of the guardian's visits with the adult, including the dates of the visits;
- 9 (e) action taken on behalf of the adult;
- 10 (f) the extent to which the adult has participated in decisionmaking;
- 11 (g) if the adult is living in a mental health facility or living in a facility that provides the adult with health
- 12 care or other personal services, whether the guardian considers the facility's current plan for support, care,
- 13 treatment, or habilitation consistent with the adult's preferences, values, prior directions, and best interest;
- 14 (h) anything of more than de minimis value which the guardian, any individual who resides with the
- 15 guardian, or the spouse, parent, child, or sibling of the guardian has received from an individual providing goods
- 16 or services to the adult;
- 17 (i) if the guardian delegated a power to an agent, the power delegated and the reason for the delegation;
- 18 (j) any business relation the guardian has with a person the guardian has paid or that has benefited from
- 19 the property of the adult;
- 20 (k) a copy of the guardian's most recently approved plan under [section 53] and a statement whether the
- 21 guardian has deviated from the plan and, if so, how the guardian has deviated and why;
- 22 (l) plans for future care and support of the adult;
- 23 (m) a recommendation as to the need for continued guardianship and any recommended change in the
- 24 scope of the guardianship; and
- 25 (n) whether any coguardian or successor guardian appointed to serve when a designated event occurs
- 26 is alive and able to serve.
- 27 (3) The court may appoint a visitor to review a report submitted under this section or a guardian's plan
- 28 submitted under [section 53], interview the guardian or adult subject to guardianship, or investigate any other
- 29 matter involving the guardianship.
- 30 (4) Notice of the filing under this section of a guardian's report, together with a copy of the report, must

1 be given to the adult subject to guardianship, a person entitled to notice under [section 47(5)] or a subsequent  
2 order, and any other person the court determines. The notice and report must be given not later than 14 days  
3 after the filing.

4 (5) The court shall establish procedures for monitoring a report submitted under this section and review  
5 each report at least annually to determine whether:

6 (a) the report provides sufficient information to establish the guardian has complied with the guardian's  
7 duties;

8 (b) the guardianship should continue; and

9 (c) the guardian's requested fees, if any, should be approved.

10 (6) If the court determines there is reason to believe a guardian for an adult has not complied with the  
11 guardian's duties or the guardianship should be modified or terminated, the court:

12 (a) shall notify the adult, the guardian, and any other person entitled to notice under [section 47(5)] or a  
13 subsequent order;

14 (b) may require additional information from the guardian;

15 (c) may appoint a visitor to interview the adult or guardian or investigate any matter involving the  
16 guardianship; and

17 (d) consistent with [sections 55 and 56], may hold a hearing to consider removal of the guardian,  
18 termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.

19 (7) If the court has reason to believe fees requested by a guardian for an adult are not reasonable, the  
20 court shall hold a hearing to determine whether to adjust the requested fees.

21 (8) A guardian for an adult may petition the court for approval of a report filed under this section. The  
22 court after review may approve the report. If the court approves the report, there is a rebuttable presumption the  
23 report is accurate as to a matter adequately disclosed in the report.

24  
25 **NEW SECTION. Section 55. Removal of guardian for adult -- appointment of successor.** (1) The  
26 court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and  
27 appoint a successor guardian to assume the duties of guardian.

28 (2) The court shall hold a hearing to determine whether to remove a guardian for an adult and appoint  
29 a successor guardian on:

30 (a) petition of the adult, guardian, or person interested in the welfare of the adult, which contains

1 allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a  
2 successor guardian may be appropriate, but the court may decline to hold a hearing if a petition based on the  
3 same or substantially similar facts was filed during the preceding 6 months;

4 (b) communication from the adult, guardian, or person interested in the welfare of the adult which  
5 supports a reasonable belief that removal of the guardian and appointment of a successor guardian may be  
6 appropriate; or

7 (c) determination by the court that a hearing would be in the best interest of the adult.

8 (3) Notice of a petition under subsection (2)(a) must be given to the adult subject to guardianship, the  
9 guardian, and any other person the court determines.

10 (4) An adult subject to guardianship who seeks to remove the guardian and have a successor guardian  
11 appointed has the right to choose an attorney to represent the adult in this matter. If the adult is not represented  
12 by an attorney, the court shall appoint an attorney under the same conditions as in [section 42]. The court shall  
13 award reasonable attorney's fees to the attorney for the adult as provided in [section 18].

14 (5) In selecting a successor guardian for an adult, the court shall follow the priorities under [section 46].

15 (6) Not later than 30 days after appointing a successor guardian, the court shall give notice of the  
16 appointment to the adult subject to guardianship and any person entitled to notice under [section 47(5)] or a  
17 subsequent order.

18

19 **NEW SECTION. Section 56. Termination or modification of guardianship for adult.** (1) An adult  
20 subject to guardianship, the guardian for the adult, or a person interested in the welfare of the adult may petition  
21 for:

22 (a) termination of the guardianship on the ground that a basis for appointment under [section 38] does  
23 not exist or termination would be in the best interest of the adult or for other good cause; or

24 (b) modification of the guardianship on the ground that the extent of protection or assistance granted is  
25 not appropriate or for other good cause.

26 (2) The court shall hold a hearing to determine whether termination or modification of a guardianship for  
27 an adult is appropriate on:

28 (a) petition under subsection (1) which contains allegations that, if true, would support a reasonable belief  
29 that termination or modification of the guardianship may be appropriate, but the court may decline to hold a  
30 hearing if a petition based on the same or substantially similar facts was filed during the preceding 6 months;

1 (b) communication from the adult, guardian, or person interested in the welfare of the adult which  
2 supports a reasonable belief that termination or modification of the guardianship may be appropriate, including  
3 because the functional needs of the adult or supports or services available to the adult have changed;

4 (c) a report from a guardian or conservator which indicates that termination or modification may be  
5 appropriate because the functional needs of the adult or supports or services available to the adult have changed  
6 or a protective arrangement instead of guardianship or other less restrictive alternative for meeting the adult's  
7 needs is available; or

8 (d) a determination by the court that a hearing would be in the best interest of the adult.

9 (3) Notice of a petition under subsection (2)(a) must be given to the adult subject to guardianship, the  
10 guardian, and any other person the court determines.

11 (4) On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall  
12 order termination unless it is proven that a basis for appointment of a guardian under [section 38] exists.

13 (5) The court shall modify the powers granted to a guardian for an adult if the powers are excessive or  
14 inadequate due to a change in the abilities or limitations of the adult, the adult's supports, or other circumstances.

15 (6) Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for  
16 an adult, the court shall follow the same procedures to safeguard the rights of the adult which apply to a petition  
17 for guardianship.

18 (7) An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has  
19 the right to choose an attorney to represent the adult in the matter. If the adult is not represented by an attorney,  
20 the court shall appoint an attorney under the same conditions as in [section 42]. The court shall award reasonable  
21 attorney's fees to the attorney for the adult as provided in [section 18].

22  
23 **NEW SECTION. Section 57. Basis for appointment of conservator.** (1) On petition and after notice  
24 and hearing, the court may appoint a conservator for the property or financial affairs of a minor if the court finds  
25 by a preponderance of evidence that appointment of a conservator is in the minor's best interest, and:

26 (a) if the minor has a parent, the court gives weight to any recommendation of the parent whether an  
27 appointment is in the minor's best interest; and

28 (b) either:

29 (i) the minor owns funds or other property requiring management or protection that otherwise cannot be  
30 provided;

1 (ii) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because  
2 of the minor's age; or

3 (iii) appointment is necessary or desirable to obtain or provide funds or other property needed for the  
4 support, care, education, health, or welfare of the minor.

5 (2) On petition and after notice and hearing, the court may appoint a conservator for the property or  
6 financial affairs of an adult if the court finds by clear-and-convincing evidence that:

7 (a) the adult is unable to manage property or financial affairs because:

8 (i) of a limitation in the adult's ability to receive and evaluate information or make or communicate  
9 decisions, even with the use of appropriate supportive services, technological assistance, or supported  
10 decisionmaking; or

11 (ii) the adult is missing, detained, or unable to return to the United States;

12 (b) appointment is necessary to:

13 (i) avoid harm to the adult or significant dissipation of the property of the adult; or

14 (ii) obtain or provide funds or other property needed for the support, care, education, health, or welfare  
15 of the adult or of an individual entitled to the adult's support; and

16 (c) the respondent's identified needs cannot be met by a protective arrangement instead of  
17 conservatorship or other less restrictive alternative.

18 (3) The court shall grant a conservator only those powers necessitated by demonstrated limitations and  
19 needs of the respondent and issue orders that will encourage development of the respondent's maximum  
20 self-determination and independence. The court may not establish a full conservatorship if a limited  
21 conservatorship, protective arrangement instead of conservatorship, or other less restrictive alternative would  
22 meet the needs of the respondent.

23  
24 **NEW SECTION. Section 58. Petition for appointment of conservator.** (1) The following may petition  
25 for the appointment of a conservator:

26 (a) the individual for whom the order is sought;

27 (b) a person interested in the estate, financial affairs, or welfare of the individual, including a person that  
28 would be adversely affected by lack of effective management of property or financial affairs of the individual; or

29 (c) the guardian for the individual.

30 (2) A petition under subsection (1) must state the petitioner's name, principal residence, current street

1 address, if different, relationship to the respondent, interest in the appointment, the name and address of any  
2 attorney representing the petitioner, and, to the extent known, the following:

3 (a) the respondent's name, age, principal residence, current street address, if different, and, if different,  
4 address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

5 (b) the name and address of the respondent's:

6 (i) spouse or, if the respondent has none, an adult with whom the respondent has shared household  
7 responsibilities for more than 6 months in the 12-month period before the filing of the petition;

8 (ii) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult  
9 nearest in kinship to the respondent who can be found with reasonable diligence; and

10 (iii) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and  
11 with whom the respondent had an ongoing relationship during the 2 years immediately before the filing of the  
12 petition;

13 (c) the name and current address of each of the following, if applicable:

14 (i) a person responsible for the care or custody of the respondent;

15 (ii) any attorney currently representing the respondent;

16 (iii) the representative payee appointed by the social security administration for the respondent;

17 (iv) a guardian or conservator acting for the respondent in this state or another jurisdiction;

18 (v) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

19 (vi) the fiduciary appointed for the respondent by the department of veterans affairs;

20 (vii) an agent designated under a health care power of attorney in which the respondent is identified as  
21 the principal;

22 (viii) an agent designated under a power of attorney for finances in which the respondent is identified as  
23 the principal;

24 (ix) a person known to have routinely assisted the respondent with decisionmaking in the 6-month period  
25 immediately before the filing of the petition;

26 (x) any proposed conservator, including a person nominated by the respondent, if the respondent is 12  
27 years of age or older; and

28 (xi) if the individual for whom a conservator is sought is a minor:

29 (A) an adult not otherwise listed with whom the minor resides; and

30 (B) each person not otherwise listed that had primary care or custody of the minor for at least 60 days



1 during the 2 years immediately before the filing of the petition or for at least 730 days during the 5 years  
2 immediately before the filing of the petition;

3 (d) a general statement of the respondent's property with an estimate of its value, including any insurance  
4 or pension, and the source and amount of other anticipated income or receipts;

5 (e) the reason conservatorship is necessary, including a brief description of:

6 (i) the nature and extent of the respondent's alleged need;

7 (ii) if the petition alleges the respondent is missing, detained, or unable to return to the United States, the  
8 relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry  
9 concerning the respondent's whereabouts;

10 (iii) any protective arrangement instead of conservatorship or other less restrictive alternative for meeting  
11 the respondent's alleged need which has been considered or implemented;

12 (iv) if no protective arrangement or other less restrictive alternatives have been considered or  
13 implemented, the reason it has not been considered or implemented; and

14 (v) the reason a protective arrangement or other less restrictive alternative is insufficient to meet the  
15 respondent's need;

16 (f) whether the petitioner seeks a limited conservatorship or a full conservatorship;

17 (g) if the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective  
18 arrangement instead of conservatorship is not appropriate;

19 (h) if the petition includes the name of a proposed conservator, the reason the proposed conservator  
20 should be appointed;

21 (i) if the petition is for a limited conservatorship, a description of the property to be placed under the  
22 conservator's control and any requested limitation on the authority of the conservator;

23 (j) whether the respondent needs an interpreter, translator, or other form of support to communicate  
24 effectively with the court or understand court proceedings; and

25 (k) the name and address of an attorney representing the petitioner, if any.

26  
27 **NEW SECTION. Section 59. Notice and hearing for appointment of conservator.** (1) On filing of a  
28 petition under [section 58] for appointment of a conservator, the court shall set a date, time, and place for a  
29 hearing on the petition.

30 (2) A copy of a petition under [section 58] and notice of a hearing on the petition must be served

1 personally on the respondent. If the respondent's whereabouts are unknown or personal service cannot be made,  
2 service on the respondent must be made by publication. The notice must inform the respondent of the  
3 respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must  
4 include a description of the nature, purpose, and consequences of granting the petition. The court may not grant  
5 a petition for appointment of a conservator if notice substantially complying with this subsection is not served on  
6 the respondent.

7 (3) In a proceeding on a petition under [section 58], the notice required under subsection (2) must be  
8 given to the persons required to be listed in the petition under [section 58(2)(a) through (2)(c)] and any other  
9 person interested in the respondent's welfare the court determines. Failure to give notice under this subsection  
10 does not preclude the court from appointing a conservator.

11 (4) After the appointment of a conservator, notice of a hearing on a petition for an order under [sections  
12 57 through 88], together with a copy of the petition, must be given to:

13 (a) the individual subject to conservatorship, if the individual is 12 years of age or older and not missing,  
14 detained, or unable to return to the United States;

15 (b) the conservator; and

16 (c) any other person the court determines.

17  
18 **NEW SECTION. Section 60. Order to preserve or apply property while proceeding pending.** While  
19 a petition under [section 58] is pending, after preliminary hearing and without notice to others, the court may issue  
20 an order to preserve and apply property of the respondent as required for the support of the respondent or an  
21 individual who is in fact dependent on the respondent.

22  
23 **NEW SECTION. Section 61. Appointment and role of visitor.** (1) If the respondent in a proceeding  
24 to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition  
25 or inform the minor or a parent of the minor about the petition or a related matter.

26 (2) If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor.  
27 The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor  
28 must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the  
29 petition.

30 (3) A visitor appointed under subsection (2) for an adult shall interview the respondent in person and in

1 a manner the respondent is best able to understand:

2 (a) explain to the respondent the substance of the petition, the nature, purpose, and effect of the  
3 proceeding, the respondent's rights at the hearing on the petition, and the general powers and duties of a  
4 conservator;

5 (b) determine the respondent's views about the appointment sought by the petitioner, including views  
6 about a proposed conservator, the conservator's proposed powers and duties, and the scope and duration of the  
7 proposed conservatorship;

8 (c) inform the respondent of the respondent's right to employ and consult with an attorney at the  
9 respondent's expense and the right to request a court-appointed attorney; and

10 (d) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's  
11 fees, may be paid from the respondent's assets.

12 (4) A visitor appointed under subsection (2) for an adult shall:

13 (a) interview the petitioner and proposed conservator, if any;

14 (b) review financial records of the respondent, if relevant to the visitor's recommendation under  
15 subsection (5)(b);

16 (c) investigate whether the respondent's needs could be met by a protective arrangement instead of  
17 conservatorship or other less restrictive alternative and, if so, identify the arrangement or other less restrictive  
18 alternative; and

19 (d) investigate the allegations in the petition and any other matter relating to the petition the court directs.

20 (5) A visitor appointed under subsection (2) for an adult promptly shall file a report in a record with the  
21 court, which must include:

22 (a) a recommendation whether an attorney should be appointed to represent the respondent;

23 (b) a recommendation:

24 (i) regarding the appropriateness of conservatorship, or whether a protective arrangement instead of  
25 conservatorship or other less restrictive alternative for meeting the respondent's needs is available;

26 (ii) if a conservatorship is recommended, whether it should be full or limited; and

27 (iii) if a limited conservatorship is recommended, the powers to be granted to the conservator, and the  
28 property that should be placed under the conservator's control;

29 (c) a statement of the qualifications of the proposed conservator and whether the respondent approves  
30 or disapproves of the proposed conservator;

- 1 (d) a recommendation whether a professional evaluation under [section 63] is necessary;
- 2 (e) a statement whether the respondent is able to attend a hearing at the location court proceedings
- 3 typically are held;
- 4 (f) a statement whether the respondent is able to participate in a hearing and which identifies any
- 5 technology or other form of support that would enhance the respondent's ability to participate; and
- 6 (g) any other matter the court directs.

7

8 **NEW SECTION. Section 62. Appointment and role of attorney.** (1) The court shall appoint an

9 attorney to represent the respondent in a proceeding to appoint a conservator if:

- 10 (a) the respondent requests an appointment;
- 11 (b) the visitor recommends an appointment; or
- 12 (c) the court determines the respondent needs representation.
- 13 (2) An attorney representing the respondent in a proceeding for appointment of a conservator shall:
- 14 (a) make reasonable efforts to ascertain the respondent's wishes;
- 15 (b) advocate for the respondent's wishes to the extent reasonably ascertainable; and
- 16 (c) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least
- 17 restrictive in type, duration, and scope, consistent with the respondent's interests.

18 (3) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding

19 under [section 58] if:

- 20 (a) the parent objects to appointment of a conservator;
- 21 (b) the court determines that counsel is needed to ensure that consent to appointment of a conservator
- 22 is informed; or
- 23 (c) the court otherwise determines the parent needs representation.

24

25 **NEW SECTION. Section 63. Professional evaluation.** (1) At or before a hearing on a petition for

26 conservatorship for an adult, the court shall order a professional evaluation of the respondent:

- 27 (a) if the respondent requests the evaluation; or
- 28 (b) in other cases, unless the court finds it has sufficient information to determine the respondent's needs
- 29 and abilities without the evaluation.

30 (2) If the court orders an evaluation under subsection (1), the respondent must be examined by a licensed

1 physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the  
2 respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged  
3 by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation  
4 promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must  
5 contain:

6 (a) a description of the nature, type, and extent of the respondent's cognitive and functional abilities and  
7 limitations with regard to the management of the respondent's property and financial affairs;

8 (b) an evaluation of the respondent's mental and physical condition and, if appropriate, educational  
9 potential, adaptive behavior, and social skills;

10 (c) a prognosis for improvement with regard to the ability to manage the respondent's property and  
11 financial affairs; and

12 (d) the date of the examination on which the report is based.

13 (3) A respondent may decline to participate in an evaluation ordered under subsection (1).

14

15 **NEW SECTION. Section 64. Attendance and rights at hearing.** (1) Except as otherwise provided in  
16 subsection (2), a hearing under [section 59] may not proceed unless the respondent attends the hearing. If it is  
17 not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held,  
18 the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent  
19 or allow the respondent to attend the hearing using real-time audio-visual technology.

20 (2) A hearing under [section 59] may proceed without the respondent in attendance if the court finds by  
21 clear-and-convincing evidence that:

22 (a) the respondent consistently and repeatedly has refused to attend the hearing after having been fully  
23 informed of the right to attend and the potential consequences of failing to do so;

24 (b) there is no practicable way for the respondent to attend and participate in the hearing even with  
25 appropriate supportive services or technological assistance; or

26 (c) the respondent is a minor who has received proper notice and attendance would be harmful to the  
27 minor.

28 (3) The respondent may be assisted in a hearing under [section 59] by a person or persons of the  
29 respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports.  
30 If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the

1 respondent, the court shall make reasonable efforts to provide it.

2 (4) The respondent has a right to choose an attorney to represent the respondent at a hearing under  
3 [section 59].

4 (5) At a hearing under [section 59], the respondent may:

5 (a) present evidence and subpoena witnesses and documents;

6 (b) examine witnesses, including any court-appointed evaluator and the visitor; and

7 (c) otherwise participate in the hearing.

8 (6) Unless excused by the court for good cause, a proposed conservator shall attend a hearing under  
9 [section 59].

10 (7) A hearing under [section 59] must be closed on request of the respondent and a showing of good  
11 cause.

12 (8) Any person may request to participate in a hearing under [section 59]. The court may grant the  
13 request, with or without a hearing, on determining that the best interest of the respondent will be served. The  
14 court may impose appropriate conditions on the person's participation.

15

16 **NEW SECTION. Section 65. Confidentiality of records.** (1) The existence of a proceeding for or the  
17 existence of conservatorship is a matter of public record unless the court seals the record after:

18 (a) the respondent, the individual subject to conservatorship, or the parent of a minor subject to  
19 conservatorship requests the record be sealed; and

20 (b) either:

21 (i) the petition for conservatorship is dismissed; or

22 (ii) the conservatorship is terminated.

23 (2) An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed,  
24 an attorney designated by the individual, and a person entitled to notice under [section 67(5)] or a subsequent  
25 order may access court records of the proceeding and resulting conservatorship, including the conservator's plan  
26 under [section 75] and the conservator's report under [section 79]. A person not otherwise entitled to access to  
27 court records under this section for good cause may petition the court for access to court records of the  
28 conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best  
29 interest of the respondent or individual subject to conservatorship or furthers the public interest and does not  
30 endanger the welfare or financial interests of the respondent or individual.

1 (3) A report under [section 61] of a visitor or professional evaluation under [section 63] is confidential and  
2 must be sealed on filing, but is available to:

3 (a) the court;

4 (b) the individual who is the subject of the report or evaluation, without limitation as to use;

5 (c) the petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of the proceeding;

6 (d) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which  
7 the respondent is identified as the principal; and

8 (e) any other person if it is in the public interest or for a purpose the court orders for good cause.

9

10 **NEW SECTION. Section 66. Who may be conservator -- order of priority.** (1) Except as otherwise  
11 provided in subsection (3), the court in appointing a conservator shall consider persons qualified to be a  
12 conservator in the following order of priority:

13 (a) a conservator, other than a temporary or emergency conservator, currently acting for the respondent  
14 in another jurisdiction;

15 (b) a person nominated as conservator by the respondent, including the respondent's most recent  
16 nomination made in a power of attorney for finances;

17 (c) an agent appointed by the respondent to manage the respondent's property under a power of attorney  
18 for finances;

19 (d) a spouse of the respondent; and

20 (e) a family member or other individual who has shown special care and concern for the respondent.

21 (2) If two or more persons have equal priority under subsection (1), the court shall select as conservator  
22 the person the court considers best qualified. In determining the best qualified person, the court shall consider  
23 the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the  
24 extent to which the person and the respondent have similar values and preferences, and the likelihood the person  
25 will be able to perform the duties of a conservator successfully.

26 (3) The court, acting in the best interest of the respondent, may decline to appoint as conservator a  
27 person having priority under subsection (1) and appoint a person having a lower priority or no priority.

28 (4) The court may appoint the public administrator as conservator if there is no other appropriate person  
29 who is able and willing to serve.

30 (5) A person that provides paid services to the respondent, or an individual who is employed by a person

1 that provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or  
2 is employed to provide paid services to the respondent, may not be appointed as conservator unless:

3 (a) the individual is related to the respondent by blood, marriage, or adoption; or

4 (b) the court finds by clear-and-convincing evidence that the person is the best qualified person available  
5 for appointment and the appointment is in the best interest of the respondent.

6 (6) An owner, operator, or employee of a long-term care facility, as defined in 50-5-101, or of a disability  
7 service provider that provides housing at which the respondent is receiving care may not be appointed as  
8 conservator unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

9

10 **NEW SECTION. Section 67. Order of appointment of conservator.** (1) A court order appointing a  
11 conservator for a minor must include findings to support appointment of a conservator and, if a full  
12 conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

13 (2) A court order appointing a conservator for an adult must:

14 (a) include a specific finding that clear-and-convincing evidence has established that the identified needs  
15 of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive  
16 alternative, including use of appropriate supportive services, technological assistance, or supported  
17 decisionmaking; and

18 (b) include a specific finding that clear-and-convincing evidence established the respondent was given  
19 proper notice of the hearing on the petition.

20 (3) A court order establishing a full conservatorship for an adult must state the basis for granting a full  
21 conservatorship and include specific findings to support the conclusion that a limited conservatorship would not  
22 meet the functional needs of the adult.

23 (4) A court order establishing a limited conservatorship must state the specific property placed under the  
24 control of the conservator and the powers granted to the conservator.

25 (5) The court, as part of an order establishing a conservatorship, shall identify any person that  
26 subsequently is entitled to:

27 (a) notice of the rights of the individual subject to conservatorship under [section 68(2)];

28 (b) notice of a sale of or surrender of a lease to the primary dwelling of the individual;

29 (c) notice that the conservator has delegated a power that requires court approval under [section 70] or  
30 substantially all powers of the conservator;



- 1 (d) notice that the conservator will be unavailable to perform the conservator's duties for more than 1  
2 month;
- 3 (e) a copy of the conservator's plan under [section 75] and the conservator's report under [section 79];
- 4 (f) access to court records relating to the conservatorship;
- 5 (g) notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and  
6 personal interests;
- 7 (h) notice of the death or significant change in the condition of the individual;
- 8 (i) notice that the court has limited or modified the powers of the conservator; and
- 9 (j) notice of the removal of the conservator.

10 (6) If an individual subject to conservatorship is an adult, the spouse and adult children of the adult  
11 subject to conservatorship are entitled under subsection (5) to notice unless the court determines notice would  
12 be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest  
13 of the adult.

14 (7) If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is  
15 entitled under subsection (5) to notice unless the court determines notice would not be in the best interest of the  
16 minor.

17

18 **NEW SECTION. Section 68. Notice of order of appointment -- rights.** (1) A conservator appointed  
19 under [section 67] shall give to the individual subject to conservatorship and to all other persons given notice  
20 under [section 59] a copy of the order of appointment, together with notice of the right to request termination or  
21 modification. The order and notice must be given not later than 14 days after the appointment.

22 (2) Not later than 30 days after appointment of a conservator under [section 67], the court shall give to  
23 the individual subject to conservatorship, the conservator, and any other person entitled to notice under [section  
24 67(5)] a statement of the rights of the individual subject to conservatorship and procedures to seek relief if the  
25 individual is denied those rights. The statement must be in plain language, in at least 16-point font, and to the  
26 extent feasible, in a language in which the individual subject to conservatorship is proficient. The statement must  
27 notify the individual subject to conservatorship of the right to:

- 28 (a) seek termination or modification of the conservatorship, or removal of the conservator, and choose  
29 an attorney to represent the individual in these matters;
- 30 (b) participate in decisionmaking to the extent reasonably feasible;

1 (c) receive a copy of the conservator's plan under [section 75], the conservator's inventory under [section  
2 76], and the conservator's report under [section 79]; and

3 (d) object to the conservator's inventory, plan, or report.

4 (3) If a conservator is appointed for the reasons stated in [section 57(2)(a)(ii)] and the individual subject  
5 to conservatorship is missing, notice under this section to the individual is not required.

6  
7 **NEW SECTION. Section 69. Emergency conservator.** (1) On its own or on petition by a person  
8 interested in an individual's welfare after a petition has been filed under [section 58], the court may appoint an  
9 emergency conservator for the individual if the court finds:

10 (a) appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the  
11 individual's property or financial interests;

12 (b) no other person appears to have authority and willingness to act in the circumstances; and

13 (c) there is reason to believe that a basis for appointment of a conservator under [section 57] exists.

14 (2) The duration of authority of an emergency conservator may not exceed 60 days and the emergency  
15 conservator may exercise only the powers specified in the order of appointment. The emergency conservator's  
16 authority may be extended once for not more than 60 days if the court finds that the conditions for appointment  
17 of an emergency conservator under subsection (1) continue.

18 (3) Immediately on filing of a petition for an emergency conservator, the court shall appoint an attorney  
19 to represent the respondent in the proceeding. Except as otherwise provided in subsection (4), reasonable notice  
20 of the date, time, and place of a hearing on the petition must be given to the respondent, the respondent's  
21 attorney, and any other person the court determines.

22 (4) The court may appoint an emergency conservator without notice to the respondent and any attorney  
23 for the respondent only if the court finds from an affidavit or testimony that the respondent's property or financial  
24 interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held.  
25 If the court appoints an emergency conservator without giving notice under subsection (3), the court must give  
26 notice of the appointment not later than 48 hours after the appointment to:

27 (a) the respondent;

28 (b) the respondent's attorney; and

29 (c) any other person the court determines.

30 (5) Not later than 5 days after the appointment, the court shall hold a hearing on the appropriateness of

1 the appointment.

2 (6) Appointment of an emergency conservator under this section is not a determination that a basis exists  
3 for appointment of a conservator under [section 57].

4 (7) The court may remove an emergency conservator appointed under this section at any time. The  
5 emergency conservator shall make any report the court requires.

6  
7 **NEW SECTION. Section 70. Powers of conservator requiring court approval.** (1) Except as  
8 otherwise ordered by the court, a conservator must give notice to persons entitled to notice under [section 59(4)]  
9 and receive specific authorization by the court before the conservator may exercise with respect to the  
10 conservatorship the power to:

11 (a) make a gift, except a gift of de minimis value;

12 (b) sell, encumber an interest in, or surrender a lease to the primary dwelling of the individual subject to  
13 conservatorship;

14 (c) convey, release, or disclaim a contingent or expectant interest in property, including marital property  
15 and any right of survivorship incident to joint tenancy or tenancy by the entireties;

16 (d) exercise or release a power of appointment;

17 (e) create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the  
18 trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual  
19 subject to conservatorship;

20 (f) exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or  
21 surrender the policy or annuity for its cash value;

22 (g) exercise a right to an elective share in the estate of a deceased spouse of the individual subject to  
23 conservatorship or renounce or disclaim a property interest;

24 (h) grant a creditor priority for payment over creditors of the same or higher class if the creditor is  
25 providing property or services used to meet the basic living and care needs of the individual subject to  
26 conservatorship and preferential treatment otherwise would be impermissible under [section 84(5)]; and

27 (i) make, modify, amend, or revoke the will of the individual subject to conservatorship in compliance with  
28 Title 72, chapter 2.

29 (2) In approving a conservator's exercise of a power listed in subsection (1), the court shall consider  
30 primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can

1 be ascertained.

2 (3) To determine under subsection (2) the decision the individual subject to conservatorship would make  
3 if able, the court shall consider the individual's prior or current directions, preferences, opinions, values, and  
4 actions, to the extent actually known or reasonably ascertainable by the conservator. The court also shall  
5 consider:

6 (a) the financial needs of the individual subject to conservatorship and individuals who are in fact  
7 dependent on the individual subject to conservatorship for support, and the interests of creditors of the individual;

8 (b) possible reduction of income, estate, inheritance, or other tax liabilities;

9 (c) eligibility for governmental assistance;

10 (d) the previous pattern of giving or level of support provided by the individual;

11 (e) any existing estate plan or lack of estate plan of the individual;

12 (f) the life expectancy of the individual and the probability the conservatorship will terminate before the  
13 individual's death; and

14 (g) any other relevant factor.

15 (4) A conservator may not revoke or amend a power of attorney for finances executed by the individual  
16 subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes  
17 precedence over that of the conservator, unless the court orders otherwise.

18

19 **NEW SECTION. Section 71. Petition for order after appointment.** An individual subject to  
20 conservatorship or a person interested in the welfare of the individual may petition for an order:

21 (1) requiring the conservator to furnish a bond or collateral or additional bond or collateral or allowing a  
22 reduction in a bond or collateral previously furnished;

23 (2) requiring an accounting for the administration of the conservatorship estate;

24 (3) directing distribution;

25 (4) removing the conservator and appointing a temporary or successor conservator;

26 (5) modifying the type of appointment or powers granted to the conservator, if the extent of protection or  
27 management previously granted is excessive or insufficient to meet the individual's needs, including because the  
28 individual's abilities or supports have changed;

29 (6) rejecting or modifying the conservator's plan under [section 75], the conservator's inventory under  
30 [section 76], or the conservator's report under [section 79]; or

1 (7) granting other appropriate relief.

2

3 **NEW SECTION. Section 72. Bond -- alternative asset-protection arrangement.** (1) Except as  
4 otherwise provided in subsection (3), the court shall require a conservator to furnish a bond with a surety the court  
5 specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties  
6 of the conservator. The court may waive the requirement only if the court finds that a bond or other  
7 asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship.  
8 Except as otherwise provided in subsection (3), the court may not waive the requirement if the conservator is in  
9 the business of serving as a conservator and is being paid for the conservator's service.

10 (2) Unless the court directs otherwise, the bond required under this section must be in the amount of the  
11 aggregate capital value of the conservatorship estate, plus 1 year's estimated income, less the value of property  
12 deposited under an arrangement requiring a court order for its removal and real property the conservator lacks  
13 power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept  
14 collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

15 (3) A regulated financial-service institution qualified to do trust business in this state is not required to give  
16 a bond under this section.

17

18 **NEW SECTION. Section 73. Terms and requirements of bond.** (1) The following rules apply to the  
19 bond required under [section 72]:

20 (a) Except as otherwise provided by the bond, the surety and the conservator are jointly and severally  
21 liable.

22 (b) By executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the  
23 court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in  
24 which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown  
25 in the records of the court in which the bond is filed and any other address of the surety then known to the person  
26 required to provide the notice.

27 (c) On petition of a successor conservator or person affected by a breach of the obligation of the bond,  
28 a proceeding may be brought against the surety for breach of the obligation of the bond.

29 (d) A proceeding against the bond may be brought until liability under the bond is exhausted.

30 (2) A proceeding may not be brought under this section against a surety of a bond on a matter as to which

1 a proceeding against the conservator is barred.

2 (3) If a bond under [section 72] is not renewed by the conservator, the surety or sureties immediately shall  
3 give notice to the court and the individual subject to conservatorship.

4  
5 **NEW SECTION. Section 74. Duties of conservator.** (1) A conservator is a fiduciary and has duties  
6 of prudence and loyalty to the individual subject to conservatorship.

7 (2) A conservator shall promote the self-determination of the individual subject to conservatorship and,  
8 to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf, and  
9 develop or regain the capacity to manage the individual's personal affairs.

10 (3) In making a decision for an individual subject to conservatorship, the conservator shall make the  
11 decision the conservator reasonably believes the individual would make if able, unless doing so would fail to  
12 preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably  
13 harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the  
14 individual would make if able, the conservator shall consider the individual's prior or current directions,  
15 preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the  
16 conservator.

17 (4) If a conservator cannot make a decision under subsection (3) because the conservator does not know  
18 and cannot reasonably determine the decision the individual subject to conservatorship probably would make if  
19 able, or the conservator reasonably believes the decision the individual would make would fail to preserve  
20 resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or  
21 endanger the welfare or personal or financial interests of the individual, the conservator shall act in accordance  
22 with the best interest of the individual. In determining the best interest of the individual, the conservator shall  
23 consider:

24 (a) information received from professionals and persons that demonstrate sufficient interest in the welfare  
25 of the individual;

26 (b) other information the conservator believes the individual would have considered if the individual were  
27 able to act; and

28 (c) other factors a reasonable person in the circumstances of the individual would consider, including  
29 consequences for others.

30 (5) Except when inconsistent with the conservator's duties under subsections (1) through (4), a

- 1 conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:
- 2 (a) the circumstances of the individual subject to conservatorship and the conservatorship estate;
- 3 (b) general economic conditions;
- 4 (c) the possible effect of inflation or deflation;
- 5 (d) the expected tax consequences of an investment decision or strategy;
- 6 (e) the role of each investment or course of action in relation to the conservatorship estate as a whole;
- 7 (f) the expected total return from income and appreciation of capital;
- 8 (g) the need for liquidity, regularity of income, and preservation or appreciation of capital; and
- 9 (h) the special relationship or value, if any, of specific property to the individual subject to conservatorship.
- 10 (6) The propriety of a conservator's investment and management of the conservatorship estate is
- 11 determined in light of the facts and circumstances existing when the conservator decides or acts and not by
- 12 hindsight.
- 13 (7) A conservator shall make a reasonable effort to verify facts relevant to the investment and
- 14 management of the conservatorship estate.
- 15 (8) A conservator that has special skills or expertise, or is named conservator in reliance on the
- 16 conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in
- 17 carrying out the conservator's duties.
- 18 (9) In investing, selecting specific property for distribution, and invoking a power of revocation or
- 19 withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any
- 20 estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or
- 21 other donative, nominative, or appointive instrument of the individual.
- 22 (10) A conservator shall maintain insurance on the insurable real and personal property of the individual
- 23 subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or the
- 24 court finds:
- 25 (a) the property lacks sufficient equity; or
- 26 (b) insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be
- 27 in the best interest of the individual.
- 28 (11) If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the
- 29 extent feasible.
- 30 (12) A conservator has access to and authority over a digital asset of the individual subject to

1 conservatorship to the extent provided by Title 72, chapter 31, part 4, or court order.

2 (13) A conservator for an adult shall notify the court if the condition of the adult has changed so that the  
3 adult is capable of exercising rights previously removed. The notice must be given immediately on learning of the  
4 change.

5

6 **NEW SECTION. Section 75. Conservator's plan.** (1) A conservator, not later than 60 days after  
7 appointment and when there is a significant change in circumstances or the conservator seeks to deviate  
8 significantly from the conservator's plan, shall file with the court a plan for protecting, managing, expending, and  
9 distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual  
10 subject to conservatorship and take into account the best interest of the individual as well as the individual's  
11 preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the conservator.

12 The conservator shall include in the plan:

13 (a) a budget containing projected expenses and resources, including an estimate of the total amount of  
14 fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes  
15 to charge for each service the conservator anticipates providing to the individual;

16 (b) how the conservator will involve the individual in decisions about management of the conservatorship  
17 estate;

18 (c) any step the conservator plans to take to develop or restore the ability of the individual to manage the  
19 conservatorship estate; and

20 (d) an estimate of the duration of the conservatorship.

21 (2) A conservator shall give notice of the filing of the conservator's plan under subsection (1), together  
22 with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under [section  
23 67(5)] or a subsequent order, and any other person the court determines. The notice must include a statement  
24 of the right to object to the plan and be given not later than 14 days after the filing.

25 (3) An individual subject to conservatorship and any person entitled under subsection (2) to receive notice  
26 and a copy of the conservator's plan may object to the plan.

27 (4) The court shall review the conservator's plan filed under subsection (1) and determine whether to  
28 approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an  
29 objection under subsection (3) and whether the plan is consistent with the conservator's duties and powers. The  
30 court may not approve the plan until 30 days after its filing.



1 (5) After a conservator's plan under this section is approved by the court, the conservator shall provide  
 2 a copy of the plan to the individual subject to conservatorship, a person entitled to notice under [section 67(5)]  
 3 or a subsequent order, and any other person the court determines.

4  
 5 **NEW SECTION. Section 76. Inventory -- records.** (1) Not later than 60 days after appointment, a  
 6 conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate,  
 7 together with an oath or affirmation that the inventory is believed to be complete and accurate as far as  
 8 information permits.

9 (2) A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship,  
 10 a person entitled to notice under [section 67(5)] or a subsequent order, and any other person the court  
 11 determines. The notice must be given not later than 14 days after the filing.

12 (3) A conservator shall keep records of the administration of the conservatorship estate and make them  
 13 available for examination on reasonable request of the individual subject to conservatorship, a guardian for the  
 14 individual, or any other person the conservator or the court determines.

15  
 16 **NEW SECTION. Section 77. Administrative powers of conservator not requiring court approval.**

17 (1) Except as otherwise provided in [section 70] or qualified or limited in the court's order of appointment and  
 18 stated in the letters of office, a conservator has all powers granted in this section and any additional power  
 19 granted to a trustee by law of this state other than [sections 1 through 105].

20 (2) A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to  
 21 accomplish the purpose of the conservatorship, without specific court authorization or confirmation, may with  
 22 respect to the conservatorship estate:

23 (a) collect, hold, and retain property, including property in which the conservator has a personal interest  
 24 and real property in another state, until the conservator determines disposition of the property should be made;

25 (b) receive additions to the conservatorship estate;

26 (c) continue or participate in the operation of a business or other enterprise;

27 (d) acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an  
 28 undivided interest;

29 (e) invest assets;

30 (f) deposit funds or other property in a financial institution, including one operated by the conservator;

- 1 (g) acquire or dispose of property, including real property in another state, for cash or on credit, at public  
2 or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon  
3 property;
- 4 (h) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any  
5 improvement, or raze an existing or erect a new party wall or building;
- 6 (i) subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust  
7 a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving  
8 consideration, and dedicate an easement to public use without consideration;
- 9 (j) enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase  
10 or renew, for a term within or extending beyond the term of the conservatorship;
- 11 (k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources  
12 or a pooling or unitization agreement;
- 13 (l) grant an option involving disposition of property or accept or exercise an option for the acquisition of  
14 property;
- 15 (m) vote a security, in person or by general or limited proxy;
- 16 (n) pay a call, assessment, or other sum chargeable or accruing against or on account of a security;
- 17 (o) sell or exercise a stock subscription or conversion right;
- 18 (p) consent, directly or through a committee or agent, to the reorganization, consolidation, merger,  
19 dissolution, or liquidation of a corporation or other business enterprise;
- 20 (q) hold a security in the name of a nominee or in other form without disclosure of the conservatorship  
21 so that title to the security may pass by delivery;
- 22 (r) insure:
- 23 (i) the conservatorship estate, in whole or in part, against damage or loss in accordance with [section  
24 74(10)]; and
- 25 (ii) the conservator against liability with respect to a third person;
- 26 (s) borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;
- 27 (t) advance funds for the protection of the conservatorship estate or the individual subject to  
28 conservatorship and all expenses, losses, and liability sustained in the administration of the conservatorship  
29 estate or because of holding any property for which the conservator has a lien on the conservatorship estate;
- 30 (u) pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject

1 to conservatorship by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to  
2 the conservatorship estate to the extent the claim is uncollectible;

3 (v) pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred  
4 in the collection, care, administration, and protection of the conservatorship estate;

5 (w) pay a sum distributable to the individual subject to conservatorship or an individual who is in fact  
6 dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the  
7 distributee:

8 (i) to the guardian for the distributee;

9 (ii) to the custodian of the distributee under Title 72, chapter 26, or custodial trustee under a custodial  
10 trust; or

11 (iii) if there is no guardian, custodian, or custodial trustee, to a relative or other person having physical  
12 custody of the distributee;

13 (x) bring or defend an action, claim, or proceeding in any jurisdiction for the protection of the  
14 conservatorship estate or the conservator in the performance of the conservator's duties;

15 (y) structure the finances of the individual subject to conservatorship to establish eligibility for a public  
16 benefit, including by making gifts consistent with the individual's preferences, values, and prior directions, if the  
17 conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the  
18 conservator's duties; and

19 (z) execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the  
20 conservator.

21  
22 **NEW SECTION. Section 78. Distribution from conservatorship estate.** Except as otherwise provided  
23 in [section 70] or qualified or limited in the court's order of appointment and stated in the letters of office, and  
24 unless contrary to a conservator's plan under [section 75], the conservator may expend or distribute income or  
25 principal of the conservatorship estate without specific court authorization or confirmation for the support, care,  
26 education, health, or welfare of the individual subject to conservatorship or an individual who is in fact dependent  
27 on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with  
28 the following rules:

29 (1) The conservator shall consider a recommendation relating to the appropriate standard of support,  
30 care, education, health, or welfare for the individual subject to conservatorship or individual who is dependent

1 on the individual subject to conservatorship, made by a guardian for the individual subject to conservatorship,  
2 if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a parent of the  
3 minor.

4 (2) The conservator acting in compliance with the conservator's duties under [section 74] is not liable for  
5 an expenditure or distribution made based on a recommendation under subsection (1) unless the conservator  
6 knows the expenditure or distribution is not in the best interest of the individual subject to conservatorship.

7 (3) In making an expenditure or distribution under this section, the conservator shall consider:

8 (a) the size of the conservatorship estate, the estimated duration of the conservatorship, and the  
9 likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to  
10 manage the individual's financial affairs and the conservatorship estate;

11 (b) the accustomed standard of living of the individual subject to conservatorship and individual who is  
12 dependent on the individual subject to conservatorship;

13 (c) other funds or source used for the support of the individual subject to conservatorship; and

14 (d) the preferences, values, and prior directions of the individual subject to conservatorship.

15 (4) Funds expended or distributed under this section may be paid by the conservator to any person,  
16 including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have  
17 made, or in advance for services to be provided to the individual subject to conservatorship or individual who is  
18 dependent on the individual subject to conservatorship if it is reasonable to expect the services will be performed  
19 and advance payment is customary or reasonably necessary under the circumstances.

20  
21 **NEW SECTION. Section 79. Conservator's report and accounting -- monitoring.** (1) A conservator  
22 shall file with the court a report in a record regarding the administration of the conservatorship estate annually  
23 unless the court otherwise directs, on resignation or removal, on termination of the conservatorship, and at any  
24 other time the court directs.

25 (2) A report under subsection (1) must state or contain:

26 (a) an accounting that lists property included in the conservatorship estate and the receipts,  
27 disbursements, liabilities, and distributions during the period for which the report is made;

28 (b) a list of the services provided to the individual subject to conservatorship;

29 (c) a copy of the conservator's most recently approved plan and a statement whether the conservator  
30 has deviated from the plan and, if so, how the conservator has deviated and why;

1 (d) a recommendation as to the need for continued conservatorship and any recommended change in  
2 the scope of the conservatorship;

3 (e) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing  
4 the status of bank accounts, investment accounts, and mortgages or other debts of the individual subject to  
5 conservatorship with all but the last four digits of the account numbers and social security number redacted;

6 (f) anything of more than de minimis value which the conservator, any individual who resides with the  
7 conservator, or the spouse, parent, child, or sibling of the conservator has received from a person providing  
8 goods or services to the individual subject to conservatorship;

9 (g) any business relation the conservator has with a person the conservator has paid or that has  
10 benefited from the property of the individual subject to conservatorship; and

11 (h) whether any coconservator or successor conservator appointed to serve when a designated event  
12 occurs is alive and able to serve.

13 (3) The court may appoint a visitor to review a report under this section or conservator's plan under  
14 [section 75], interview the individual subject to conservatorship or conservator, or investigate any other matter  
15 involving the conservatorship. In connection with the report, the court may order the conservator to submit the  
16 conservatorship estate to appropriate examination in a manner the court directs.

17 (4) Notice of the filing under this section of a conservator's report, together with a copy of the report, must  
18 be provided to the individual subject to conservatorship, a person entitled to notice under [section 67(5)] or a  
19 subsequent order, and other persons the court determines. The notice and report must be given not later than  
20 14 days after filing.

21 (5) The court shall establish procedures for monitoring a report submitted under this section and review  
22 each report at least annually to determine whether:

23 (a) the reports provide sufficient information to establish the conservator has complied with the  
24 conservator's duties;

25 (b) the conservatorship should continue; and

26 (c) the conservator's requested fees, if any, should be approved.

27 (6) If the court determines there is reason to believe a conservator has not complied with the  
28 conservator's duties or the conservatorship should not continue, the court:

29 (a) shall notify the individual subject to conservatorship, the conservator, and any other person entitled  
30 to notice under [section 67(5)] or a subsequent order;

1 (b) may require additional information from the conservator;

2 (c) may appoint a visitor to interview the individual subject to conservatorship or conservator or  
3 investigate any matter involving the conservatorship; and

4 (d) consistent with [sections 86 and 87], may hold a hearing to consider removal of the conservator,  
5 termination of the conservatorship, or a change in the powers granted to the conservator or terms of the  
6 conservatorship.

7 (7) If the court has reason to believe fees requested by a conservator are not reasonable, the court shall  
8 hold a hearing to determine whether to adjust the requested fees.

9 (8) A conservator may petition the court for approval of a report filed under this section. The court after  
10 review may approve the report. If the court approves the report, there is a rebuttable presumption the report is  
11 accurate as to a matter adequately disclosed in the report.

12 (9) An order, after notice and hearing, approving an interim report of a conservator filed under this section  
13 adjudicates liabilities concerning a matter adequately disclosed in the report, as to a person given notice of the  
14 report or accounting.

15 (10) An order, after notice and hearing, approving a final report filed under this section discharges the  
16 conservator from all liabilities, claims, and causes of action by a person given notice of the report and the hearing  
17 as to a matter adequately disclosed in the report.

18  
19 **NEW SECTION. Section 80. Attempted transfer of property by individual subject to**  
20 **conservatorship.** (1) The interest of an individual subject to conservatorship in property included in the  
21 conservatorship estate is not transferrable or assignable by the individual and is not subject to levy, garnishment,  
22 or similar process for claims against the individual unless allowed under [section 84].

23 (2) If an individual subject to conservatorship enters into a contract after having the right to enter the  
24 contract removed by the court, the contract is void against the individual and the individual's property but is  
25 enforceable against the person that contracted with the individual.

26 (3) A person other than the conservator that deals with an individual subject to conservatorship with  
27 respect to property included in the conservatorship estate is entitled to protection provided by law of this state  
28 other than [sections 1 through 105].

29  
30 **NEW SECTION. Section 81. Transaction involving conflict of interest.** A transaction involving a

1 conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary duties and  
2 personal interests is voidable unless the transaction is authorized by court order after notice to persons entitled  
3 to notice under [section 67(5)] or a subsequent order. A transaction affected by a substantial conflict includes a  
4 sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, an  
5 individual with whom the conservator resides, the spouse, descendant, sibling, agent, or attorney of the  
6 conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

7  
8 **NEW SECTION. Section 82. Protection of person dealing with conservator.** (1) A person that  
9 assists or deals with a conservator in good faith and for value in any transaction, other than a transaction  
10 requiring a court order under [section 70], is protected as though the conservator properly exercised any power  
11 in question. Knowledge by a person that the person is dealing with a conservator alone does not require the  
12 person to inquire into the existence of authority of the conservator or the propriety of the conservator's exercise  
13 of authority, but restrictions on authority stated in letters of office, or otherwise provided by law, are effective as  
14 to the person. A person that pays or delivers property to a conservator is not responsible for proper application  
15 of the property.

16 (2) Protection under subsection (1) extends to a procedural irregularity or jurisdictional defect in the  
17 proceeding leading to the issuance of letters of office and does not substitute for protection for a person that  
18 assists or deals with a conservator provided by comparable provisions in law of this state other than [sections  
19 1 through 105] relating to a commercial transaction or simplifying a transfer of securities by a fiduciary.

20  
21 **NEW SECTION. Section 83. Death of individual subject to conservatorship.** (1) If an individual  
22 subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual  
23 in the conservator's possession and inform the personal representative named in the will if feasible, or if not  
24 feasible, a beneficiary named in the will, of the delivery.

25 (2) If 40 days after the death of an individual subject to conservatorship no personal representative has  
26 been appointed and no application or petition for appointment is before the court, the conservator may apply to  
27 exercise the powers and duties of a personal representative to administer and distribute the decedent's estate.  
28 The conservator shall give notice to a person nominated as personal representative by a will of the decedent of  
29 which the conservator is aware. The court may grant the application if there is no objection and endorse the  
30 letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator

1 has acquired the powers and duties of a personal representative.

2 (3) Issuance of an order under this section has the effect of an order of appointment of a personal  
3 representative under the Uniform Probate Code.

4 (4) On the death of an individual subject to conservatorship, the conservator shall conclude the  
5 administration of the conservatorship estate as provided in [section 87].

6

7 **NEW SECTION. Section 84. Presentation and allowance of claim.** (1) A conservator may pay, or  
8 secure by encumbering property included in the conservatorship estate, a claim against the conservatorship  
9 estate or the individual subject to conservatorship arising before or during the conservatorship, on presentation  
10 and allowance in accordance with the priorities under subsection (4). A claimant may present a claim by:

11 (a) sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the  
12 name and address of the claimant, and the amount claimed; or

13 (b) filing the claim with the court, in a form acceptable to the court, and sending or delivering a copy of  
14 the claim to the conservator.

15 (2) A claim under subsection (1) is presented on receipt by the conservator of the statement of the claim  
16 or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed  
17 in whole or in part by the conservator in a record sent or delivered to the claimant not later than 60 days after its  
18 presentation. Before payment, the conservator may change an allowance of the claim to a disallowance in whole  
19 or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a  
20 claim tolls until 30 days after disallowance of the claim the running of a statute of limitations that has not expired  
21 relating to the claim.

22 (3) A claimant whose claim under subsection (1) has not been paid may petition the court to determine  
23 the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment,  
24 or security by encumbering property included in the conservatorship estate. If a proceeding is pending against  
25 the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter,  
26 the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against  
27 the conservatorship estate.

28 (4) If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator  
29 shall distribute the estate in money or in kind in payment of claims in the following order:

30 (a) costs and expenses of administration;



1 (b) a claim of the federal or state government having priority under law other than [sections 1 through  
2 105];

3 (c) a claim incurred by the conservator for support, care, education, health, or welfare previously provided  
4 to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to  
5 conservatorship;

6 (d) a claim arising before the conservatorship; and

7 (e) all other claims.

8 (5) Preference may not be given in the payment of a claim under subsection (4) over another claim of  
9 the same class. A claim due and payable may not be preferred over a claim not due unless:

10 (a) doing so would leave the conservatorship estate without sufficient funds to pay the basic living and  
11 health care expenses of the individual subject to conservatorship; and

12 (b) the court authorizes the preference under [section 70(1)(h)].

13 (6) If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the  
14 best interest of the individual subject to conservatorship, may order the conservator to grant a security interest  
15 in the conservatorship estate for payment of a claim at a future date.

16  
17 **NEW SECTION. Section 85. Personal liability of conservator.** (1) Except as otherwise agreed by a  
18 conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in  
19 the course of administration of the conservatorship estate unless the conservator fails to reveal the conservator's  
20 representative capacity in the contract or before entering into the contract.

21 (2) A conservator is personally liable for an obligation arising from control of property of the  
22 conservatorship estate or an act or omission occurring in the course of administration of the conservatorship  
23 estate only if the conservator is personally at fault.

24 (3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising  
25 from control of property included in the conservatorship estate, or a tort committed in the course of administration  
26 of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the  
27 conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

28 (4) A question of liability between a conservatorship estate and the conservator personally may be  
29 determined in a proceeding for accounting, surcharge, or indemnification or another appropriate proceeding or  
30 action.

1  
2           **NEW SECTION. Section 86. Removal of conservator -- appointment of successor.** (1) The court  
3 may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a  
4 successor conservator to assume the duties of the conservator.

5           (2) The court shall hold a hearing to determine whether to remove a conservator and appoint a successor  
6 on:

7           (a) petition of the individual subject to conservatorship, conservator, or person interested in the welfare  
8 of the individual which contains allegations that, if true, would support a reasonable belief that removal of the  
9 conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if  
10 a petition based on the same or substantially similar facts was filed during the preceding 6 months;

11           (b) communication from the individual subject to conservatorship, conservator, or person interested in  
12 the welfare of the individual which supports a reasonable belief that removal of the conservator and appointment  
13 of a successor may be appropriate; or

14           (c) determination by the court that a hearing would be in the best interest of the individual subject to  
15 conservatorship.

16           (3) Notice of a petition under subsection (2)(a) must be given to the individual subject to conservatorship,  
17 the conservator, and any other person the court determines.

18           (4) An individual subject to conservatorship who seeks to remove the conservator and have a successor  
19 appointed has the right to choose an attorney to represent the individual in this matter. If the individual is not  
20 represented by an attorney, the court shall appoint an attorney under the same conditions as in [section 62]. The  
21 court shall award reasonable attorney's fees to the attorney as provided in [section 18].

22           (5) In selecting a successor conservator, the court shall follow the priorities under [section 66].

23           (6) Not later than 30 days after appointing a successor conservator, the court shall give notice of the  
24 appointment to the individual subject to conservatorship and any person entitled to notice under [section 67(5)]  
25 or a subsequent order.

26  
27           **NEW SECTION. Section 87. Termination or modification of conservatorship.** (1) A conservatorship  
28 for a minor terminates on the earliest of:

29           (a) a court order terminating the conservatorship;

30           (b) the minor becoming an adult or, if the minor consents or the court finds by clear-and-convincing

- 1 evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;
- 2 (c) emancipation of the minor; or
- 3 (d) death of the minor.
- 4 (2) A conservatorship for an adult terminates on order of the court or when the adult dies.
- 5 (3) An individual subject to conservatorship, the conservator, or a person interested in the welfare of the
- 6 individual may petition for:
- 7 (a) termination of the conservatorship on the ground that a basis for appointment under [section 57] does
- 8 not exist or termination would be in the best interest of the individual or for other good cause; or
- 9 (b) modification of the conservatorship on the ground that the extent of protection or assistance granted
- 10 is not appropriate or for other good cause.
- 11 (4) The court shall hold a hearing to determine whether termination or modification of a conservatorship
- 12 is appropriate on:
- 13 (a) petition under subsection (3) which contains allegations that, if true, would support a reasonable belief
- 14 that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a
- 15 hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;
- 16 (b) a communication from the individual subject to conservatorship, conservator, or person interested in
- 17 the welfare of the individual which supports a reasonable belief that termination or modification of the
- 18 conservatorship may be appropriate, including because the functional needs of the individual or supports or
- 19 services available to the individual have changed;
- 20 (c) a report from a guardian or conservator which indicates that termination or modification may be
- 21 appropriate because the functional needs or supports or services available to the individual have changed or a
- 22 protective arrangement instead of conservatorship or other less restrictive alternative is available; or
- 23 (d) a determination by the court that a hearing would be in the best interest of the individual.
- 24 (5) Notice of a petition under subsection (3) must be given to the individual subject to conservatorship,
- 25 the conservator, and any such other person the court determines.
- 26 (6) On presentation of prima facie evidence for termination of a conservatorship, the court shall order
- 27 termination unless it is proven that a basis for appointment of a conservator under [section 57] exists.
- 28 (7) The court shall modify the powers granted to a conservator if the powers are excessive or inadequate
- 29 due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports,
- 30 or other circumstances.

1 (8) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court  
 2 shall follow the same procedures to safeguard the rights of the individual subject to conservatorship which apply  
 3 to a petition for conservatorship.

4 (9) An individual subject to conservatorship who seeks to terminate or modify the terms of the  
 5 conservatorship has the right to choose an attorney to represent the individual in this matter. If the individual is  
 6 not represented by an attorney, the court shall appoint an attorney under the same conditions as in [section 62].  
 7 The court shall award reasonable attorney's fees to the attorney as provided in [section 18].

8 (10) On termination of a conservatorship other than by reason of the death of the individual subject to  
 9 conservatorship, property of the conservatorship estate passes to the individual. The order of termination must  
 10 direct the conservator to file a final report and petition for discharge on approval by the court of the final report.

11 (11) On termination of a conservatorship by reason of the death of the individual subject to  
 12 conservatorship, the conservator promptly shall file a final report and petition for discharge on approval by the  
 13 court of the final report. On approval of the final report, the conservator shall proceed expeditiously to distribute  
 14 the conservatorship estate to the individual's estate or as otherwise ordered by the court. The conservator may  
 15 take reasonable measures necessary to preserve the conservatorship estate until distribution can be made.

16 (12) The court shall issue a final order of discharge on the approval by the court of the final report and  
 17 satisfaction by the conservator of any other condition the court imposed on the conservator's discharge.

18  
 19 **NEW SECTION. Section 88. Transfer for benefit of minor without appointment of conservator.**

20 (1) Unless a person required to transfer funds or other property to a minor knows that a conservator for the minor  
 21 has been appointed or a proceeding is pending for conservatorship, the person may transfer an amount or value  
 22 not exceeding \$15,000 in a 12-month period to:

- 23 (a) a person that has care or custody of the minor and with whom the minor resides;  
 24 (b) a guardian for the minor;  
 25 (c) a custodian under Title 72, chapter 26; or  
 26 (d) a financial institution as a deposit in an interest-bearing account or certificate solely in the name of  
 27 the minor and shall give notice to the minor of the deposit.

28 (2) A person that transfers funds or other property under this section is not responsible for its proper  
 29 application.

30 (3) A person that receives funds or other property for a minor under subsection (1)(a) or (1)(b) may apply

1 it only to the support, care, education, health, or welfare of the minor, and may not derive a personal financial  
 2 benefit from it, except for reimbursement for necessary expenses. Funds not applied for these purposes must  
 3 be preserved for the future support, care, education, health, or welfare of the minor, and the balance, if any,  
 4 transferred to the minor when the minor becomes an adult or otherwise is emancipated.

5  
 6 **NEW SECTION. Section 89. Authority for protective arrangement.** (1) Under [sections 89 through  
 7 99], a court:

8 (a) on receiving a petition for a guardianship for an adult may order a protective arrangement instead of  
 9 guardianship as a less restrictive alternative to guardianship; and

10 (b) on receiving a petition for a conservatorship for an individual may order a protective arrangement  
 11 instead of conservatorship as a less restrictive alternative to conservatorship.

12 (2) A person interested in an adult's welfare, including the adult or a conservator for the adult, may  
 13 petition under [sections 89 through 99] for a protective arrangement instead of guardianship.

14 (3) The following persons may petition under [sections 89 through 99] for a protective arrangement  
 15 instead of conservatorship:

16 (a) the individual for whom the protective arrangement is sought;

17 (b) a person interested in the property, financial affairs, or welfare of the individual, including a person  
 18 that would be affected adversely by lack of effective management of property or financial affairs of the individual;  
 19 and

20 (c) the guardian for the individual.

21  
 22 **NEW SECTION. Section 90. Basis for protective arrangement instead of guardianship for adult.**

23 (1) After the hearing on a petition under [section 39] for a guardianship or under [section 89(2)] for a protective  
 24 arrangement instead of guardianship, the court may issue an order under subsection (2) for a protective  
 25 arrangement instead of guardianship if the court finds by clear-and-convincing evidence that:

26 (a) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care  
 27 because the respondent is unable to receive and evaluate information or make or communicate decisions, even  
 28 with appropriate supportive services, technological assistance, or supported decisionmaking; and

29 (b) the respondent's identified needs cannot be met by a less restrictive alternative.

30 (2) If the court makes the findings under subsection (1), the court, instead of appointing a guardian, may:

1 (a) authorize or direct a transaction necessary to meet the respondent's need for health, safety, or care,  
2 including:

3 (i) a particular medical treatment or refusal of a particular medical treatment;

4 (ii) a move to a specified place of dwelling; or

5 (iii) visitation or supervised visitation between the respondent and another person;

6 (b) restrict access to the respondent by a specified person whose access places the respondent at  
7 serious risk of physical, psychological, or financial harm; and

8 (c) order other arrangements on a limited basis that are appropriate.

9 (3) In deciding whether to issue an order under this section, the court shall consider the factors under  
10 [sections 50 and 51] which a guardian must consider when making a decision on behalf of an adult subject to  
11 guardianship.

12

13 **NEW SECTION. Section 91. Basis for protective arrangement instead of conservatorship for adult**  
14 **or minor.** (1) After the hearing on a petition under [section 58] for conservatorship for an adult or under [section  
15 89(3)] for a protective arrangement instead of conservatorship for an adult, the court may issue an order under  
16 subsection (3) for a protective arrangement instead of conservatorship for the adult if the court finds by  
17 clear-and-convincing evidence that:

18 (a) the adult is unable to manage property or financial affairs because:

19 (i) of a limitation in the ability to receive and evaluate information or make or communicate decisions,  
20 even with appropriate supportive services, technological assistance, or supported decisionmaking; or

21 (ii) the adult is missing, detained, or unable to return to the United States;

22 (b) an order under subsection (3) is necessary to:

23 (i) avoid harm to the adult or significant dissipation of the property of the adult; or

24 (ii) obtain or provide funds or other property needed for the support, care, education, health, or welfare  
25 of the adult or an individual entitled to the adult's support; and

26 (c) the respondent's identified needs cannot be met by a less restrictive alternative.

27 (2) After the hearing on a petition under [section 58] for conservatorship for a minor or under [section  
28 89(3)] for a protective arrangement instead of conservatorship for a minor, the court may issue an order under  
29 subsection (3) for a protective arrangement instead of conservatorship for the respondent if the court finds by a  
30 preponderance of the evidence that the arrangement is in the minor's best interest, and:

1 (a) if the minor has a parent, the court gives weight to any recommendation of the parent whether an  
2 arrangement is in the minor's best interest;

3 (b) either:

4 (i) the minor owns money or property requiring management or protection that otherwise cannot be  
5 provided;

6 (ii) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because  
7 of the minor's age; or

8 (iii) the arrangement is necessary or desirable to obtain or provide funds or other property needed for the  
9 support, care, education, health, or welfare of the minor; and

10 (c) the order under subsection (3) is necessary or desirable to obtain or provide money needed for the  
11 support, care, education, health, or welfare of the minor.

12 (3) If the court makes the findings under subsection (1) or (2), the court, instead of appointing a  
13 conservator, may:

14 (a) authorize or direct a transaction necessary to protect the financial interest or property of the  
15 respondent, including:

16 (i) an action to establish eligibility for benefits;

17 (ii) payment, delivery, deposit, or retention of funds or property;

18 (iii) sale, mortgage, lease, or other transfer of property;

19 (iv) purchase of an annuity;

20 (v) entry into a contractual relationship, including a contract to provide for personal care, supportive  
21 services, education, training, or employment;

22 (vi) addition to or establishment of a trust;

23 (vii) ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related  
24 to the property or business affairs of the respondent; or

25 (viii) settlement of a claim; or

26 (b) restrict access to the respondent's property by a specified person whose access to the property  
27 places the respondent at serious risk of financial harm.

28 (4) After the hearing on a petition under [section 89(1)(b) or (3)], whether or not the court makes the  
29 findings under subsection (1) or (2), the court may issue an order to restrict access to the respondent or the  
30 respondent's property by a specified person that the court finds by clear-and-convincing evidence:

1 (a) through fraud, coercion, duress, or the use of deception and control caused or attempted to cause  
2 an action that would have resulted in financial harm to the respondent or the respondent's property; and

3 (b) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

4 (5) Before issuing an order under subsection (3) or (4), the court shall consider the factors under [section  
5 74] a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

6 (6) Before issuing an order under subsection (3) or (4) for a respondent who is a minor, the court also  
7 shall consider the best interest of the minor, the preference of the parents of the minor, and the preference of the  
8 minor, if the minor is 12 years of age or older.

9

10 **NEW SECTION. Section 92. Petition for protective arrangement.** A petition for a protective  
11 arrangement instead of guardianship or conservatorship must state the petitioner's name, principal residence,  
12 current street address, if different, relationship to the respondent, interest in the protective arrangement, the name  
13 and address of any attorney representing the petitioner, and, to the extent known, the following:

14 (1) the respondent's name, age, principal residence, current street address, if different, and, if different,  
15 address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

16 (2) the name and address of the respondent's:

17 (a) spouse or, if the respondent has none, an adult with whom the respondent has shared household  
18 responsibilities for more than 6 months in the 12-month period before the filing of the petition;

19 (b) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult  
20 nearest in kinship to the respondent who can be found with reasonable diligence; and

21 (c) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and  
22 with whom the respondent had an ongoing relationship in the 2-year period immediately before the filing of the  
23 petition;

24 (3) the name and current address of each of the following, if applicable:

25 (a) a person responsible for the care or custody of the respondent;

26 (b) any attorney currently representing the respondent;

27 (c) the representative payee appointed by the social security administration for the respondent;

28 (d) a guardian or conservator acting for the respondent in this state or another jurisdiction;

29 (e) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

30 (f) the fiduciary appointed for the respondent by the department of veterans affairs;



- 1 (g) an agent designated under a health care power of attorney in which the respondent is identified as  
2 the principal;
- 3 (h) an agent designated under a power of attorney for finances in which the respondent is identified as  
4 the principal;
- 5 (i) a person nominated as guardian or conservator by the respondent if the respondent is 12 years of age  
6 or older;
- 7 (j) a person nominated as guardian by the respondent's parent, or spouse in a will or other signed record;
- 8 (k) a person known to have routinely assisted the respondent with decisionmaking in the 6-month period  
9 immediately before the filing of the petition; and
- 10 (l) if the respondent is a minor:
- 11 (i) an adult not otherwise listed with whom the respondent resides; and
- 12 (ii) each person not otherwise listed that had primary care or custody of the respondent for at least 60  
13 days during the 2 years immediately before the filing of the petition or for at least 730 days during the 5 years  
14 immediately before the filing of the petition;
- 15 (4) the nature of the protective arrangement sought;
- 16 (5) the reason the protective arrangement sought is necessary, including a brief description of:
- 17 (a) the nature and extent of the respondent's alleged need;
- 18 (b) any less restrictive alternative for meeting the respondent's alleged need which has been considered  
19 or implemented;
- 20 (c) if no less restrictive alternative has been considered or implemented, the reason less restrictive  
21 alternatives have not been considered or implemented; and
- 22 (d) the reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;
- 23 (6) the name and current address, if known, of any person with whom the petitioner seeks to limit the  
24 respondent's contact;
- 25 (7) whether the respondent needs an interpreter, translator, or other form of support to communicate  
26 effectively with the court or understand court proceedings;
- 27 (8) if a protective arrangement instead of guardianship is sought and the respondent has property other  
28 than personal effects, a general statement of the respondent's property with an estimate of its value, including  
29 any insurance or pension, and the source and amount of any other anticipated income or receipts; and
- 30 (9) if a protective arrangement instead of conservatorship is sought, a general statement of the

1 respondent's property with an estimate of its value, including any insurance or pension, and the source and  
2 amount of other anticipated income or receipts.

3  
4 **NEW SECTION. Section 93. Notice and hearing.** (1) On filing of a petition under [section 89], the court  
5 shall set a date, time, and place for a hearing on the petition.

6 (2) A copy of a petition under [section 89] and notice of a hearing on the petition must be served  
7 personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing,  
8 including the right to an attorney and to attend the hearing. The notice must include a description of the nature,  
9 purpose, and consequences of granting the petition. The court may not grant the petition if notice substantially  
10 complying with this subsection is not served on the respondent.

11 (3) In a proceeding on a petition under [section 89], the notice required under subsection (2) must be  
12 given to the persons required to be listed in the petition under [section 92(1) through (3)] and any other person  
13 interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not  
14 preclude the court from granting the petition.

15 (4) After the court has ordered a protective arrangement under [sections 89 through 99], notice of a  
16 hearing on a petition filed under [sections 1 through 105], together with a copy of the petition, must be given to  
17 the respondent and any other person the court determines.

18  
19 **NEW SECTION. Section 94. Appointment and role of visitor.** (1) On filing of a petition under [section  
20 89] for a protective arrangement instead of guardianship, the court shall appoint a visitor. The visitor must be an  
21 individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

22 (2) On filing of a petition under [section 89] for a protective arrangement instead of conservatorship for  
23 a minor, the court may appoint a visitor to investigate a matter related to the petition or inform the minor or a  
24 parent of the minor about the petition or a related matter.

25 (3) On filing of a petition under [section 89] for a protective arrangement instead of conservatorship for  
26 an adult, the court shall appoint a visitor. The visitor must be an individual with training or experience in the types  
27 of abilities, limitations, and needs alleged in the petition.

28 (4) A visitor appointed under subsection (1) or (3) shall interview the respondent in person and in a  
29 manner the respondent is best able to understand:

30 (a) explain to the respondent the substance of the petition, the nature, purpose, and effect of the

- 1 proceeding, and the respondent's rights at the hearing on the petition;
- 2 (b) determine the respondent's views with respect to the order sought;
- 3 (c) inform the respondent of the respondent's right to employ and consult with an attorney at the  
4 respondent's expense and the right to request a court-appointed attorney;
- 5 (d) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's  
6 fees, may be paid from the respondent's assets;
- 7 (e) if the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present  
8 dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;
- 9 (f) if a protective arrangement instead of guardianship is sought, obtain information from any physician  
10 or other person known to have treated, advised, or assessed the respondent's relevant physical or mental  
11 condition;
- 12 (g) if a protective arrangement instead of conservatorship is sought, review financial records of the  
13 respondent, if relevant to the visitor's recommendation under subsection (5)(c); and
- 14 (h) investigate the allegations in the petition and any other matter relating to the petition the court directs.
- 15 (5) A visitor appointed under this section promptly shall file a report in a record with the court, which must  
16 include:
- 17 (a) a recommendation whether an attorney should be appointed to represent the respondent;
- 18 (b) to the extent relevant to the order sought, a summary of self-care, independent-living tasks, and  
19 financial-management tasks the respondent:
- 20 (i) can manage without assistance or with existing supports;
- 21 (ii) could manage with the assistance of appropriate supportive services, technological assistance, or  
22 supported decisionmaking; and
- 23 (iii) cannot manage;
- 24 (c) a recommendation regarding the appropriateness of the protective arrangement sought and whether  
25 a less restrictive alternative for meeting the respondent's needs is available;
- 26 (d) if the petition seeks to change the physical location of the dwelling of the respondent, a statement  
27 whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a  
28 preference as to the respondent's dwelling;
- 29 (e) a recommendation whether a professional evaluation under [section 96] is necessary;
- 30 (f) a statement whether the respondent is able to attend a hearing at the location court proceedings

1 typically are held;

2 (g) a statement whether the respondent is able to participate in a hearing and which identifies any  
3 technology or other form of support that would enhance the respondent's ability to participate; and

4 (h) any other matter the court directs.  
5

6 **NEW SECTION. Section 95. Appointment and role of attorney.** (1) The court shall appoint an  
7 attorney to represent the respondent in a proceeding under [sections 89 through 99] if:

8 (a) the respondent requests the appointment;

9 (b) the visitor recommends the appointment; or

10 (c) the court determines the respondent needs representation.

11 (2) An attorney representing the respondent in a proceeding under [sections 89 through 99] shall:

12 (a) make reasonable efforts to ascertain the respondent's wishes;

13 (b) advocate for the respondent's wishes to the extent reasonably ascertainable; and

14 (c) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least  
15 restrictive alternative in type, duration, and scope, consistent with the respondent's interests.

16 (3) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding  
17 under [sections 89 through 99] if:

18 (a) the parent objects to the entry of an order for a protective arrangement instead of guardianship or  
19 conservatorship;

20 (b) the court determines that counsel is needed to ensure that consent to the entry of an order for a  
21 protective arrangement is informed; or

22 (c) the court otherwise determines the parent needs representation.  
23

24 **NEW SECTION. Section 96. Professional evaluation.** (1) At or before a hearing on a petition under  
25 [sections 89 through 99] for a protective arrangement, the court shall order a professional evaluation of the  
26 respondent:

27 (a) if the respondent requests the evaluation; or

28 (b) or in other cases, unless the court finds that it has sufficient information to determine the respondent's  
29 needs and abilities without the evaluation.

30 (2) If the court orders an evaluation under subsection (1), the respondent must be examined by a licensed

1 physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the  
2 respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged  
3 by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation  
4 promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must  
5 contain:

6 (a) a description of the nature, type, and extent of the respondent's cognitive and functional abilities and  
7 limitations;

8 (b) an evaluation of the respondent's mental and physical condition and, if appropriate, educational  
9 potential, adaptive behavior, and social skills;

10 (c) a prognosis for improvement, including with regard to the ability to manage the respondent's property  
11 and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment,  
12 support, or habilitation plan; and

13 (d) the date of the examination on which the report is based.

14 (3) The respondent may decline to participate in an evaluation ordered under subsection (1).

15  
16 **NEW SECTION. Section 97. Attendance and rights at hearing.** (1) Except as otherwise provided in  
17 subsection (2), a hearing under [sections 89 through 99] may not proceed unless the respondent attends the  
18 hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings  
19 typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient  
20 to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

21 (2) A hearing under [sections 89 through 99] may proceed without the respondent in attendance if the  
22 court finds by clear-and-convincing evidence that:

23 (a) the respondent consistently and repeatedly has refused to attend the hearing after having been fully  
24 informed of the right to attend and the potential consequences of failing to do so;

25 (b) there is no practicable way for the respondent to attend and participate in the hearing even with  
26 appropriate supportive services and technological assistance; or

27 (c) the respondent is a minor who has received proper notice and attendance would be harmful to the  
28 minor.

29 (3) The respondent may be assisted in a hearing under [sections 89 through 99] by a person or persons  
30 of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these

1 supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available  
2 to the respondent, the court shall make reasonable efforts to provide it.

3 (4) The respondent has a right to choose an attorney to represent the respondent at a hearing under  
4 [sections 89 through 99].

5 (5) At a hearing under [sections 89 through 99], the respondent may:

6 (a) present evidence and subpoena witnesses and documents;

7 (b) examine witnesses, including any court-appointed evaluator and the visitor; and

8 (c) otherwise participate in the hearing.

9 (6) A hearing under [sections 89 through 99] must be closed on request of the respondent and a showing  
10 of good cause.

11 (7) Any person may request to participate in a hearing under [sections 89 through 99]. The court may  
12 grant the request, with or without a hearing, on determining that the best interest of the respondent will be served.  
13 The court may impose appropriate conditions on the person's participation.

14  
15 **NEW SECTION. Section 98. Notice of order.** The court shall give notice of an order under [sections  
16 89 through 99] to the individual who is subject to the protective arrangement instead of guardianship or  
17 conservatorship, a person whose access to the individual is restricted by the order, and any other person the  
18 court determines.

19  
20 **NEW SECTION. Section 99. Confidentiality of records.** (1) The existence of a proceeding for or the  
21 existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record  
22 unless the court seals the record after:

23 (a) the respondent, the individual subject to the protective arrangement, or the parent of a minor subject  
24 to the protective arrangement requests the record be sealed; and

25 (b) either:

26 (i) the proceeding is dismissed;

27 (ii) the protective arrangement is no longer in effect; or

28 (iii) an act authorized by the order granting the protective arrangement has been completed.

29 (2) A respondent, an individual subject to a protective arrangement instead of guardianship or  
30 conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to a

1 protective arrangement, and any other person the court determines are entitled to access court records of the  
2 proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under  
3 this subsection for good cause may petition the court for access. The court shall grant access if access is in the  
4 best interest of the respondent or individual subject to the protective arrangement or furthers the public interest  
5 and does not endanger the welfare or financial interests of the respondent or individual.

6 (3) A report of a visitor or professional evaluation generated in the course of a proceeding under [sections  
7 89 through 99] must be sealed on filing but is available to:

- 8 (a) the court;
- 9 (b) the individual who is the subject of the report or evaluation, without limitation as to use;
- 10 (c) the petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of the proceeding;
- 11 (d) unless the court orders otherwise, an agent appointed under a power of attorney for finances in which  
12 the respondent is the principal;
- 13 (e) if the order is for a protective arrangement instead of guardianship and unless the court orders  
14 otherwise, an agent appointed under a health care power of attorney in which the respondent is identified as the  
15 principal; and
- 16 (f) any other person if it is in the public interest or for a purpose the court orders for good cause.

17  
18 **NEW SECTION. Section 100. Use of forms.** Use of the forms contained in [sections 100 through 103]  
19 is optional. Failure to use these forms does not prejudice any party.

20  
21 **NEW SECTION. Section 101. Petition for guardianship for minor.** The following form may be used  
22 to petition for guardianship for a minor:

23 **Petition for Guardianship for Minor**

24 **State of:**

25 **County of:**

26 **Name and address of attorney representing Petitioner, if applicable:**

27 **Note to Petitioner:** This form can be used to petition for a guardian for a minor. A court may appoint a guardian  
28 for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest, and:  
29 (1) the parents, after being fully informed of the nature and consequences of guardianship, consent; (2) all  
30 parental rights have been terminated; or (3) the court finds by clear-and-convincing evidence that the parents are

1 unwilling or unable to exercise their parental rights.

2 **(1) Information about the person filing this petition (the "Petitioner").**

3 (a) Name:

4 (b) Principal residence:

5 (c) Current street address (if different):

6 (d) Relationship to minor:

7 (e) Interest in this petition:

8 (f) Telephone number (optional):

9 (g) Email address (optional):

10 **(2) Information about the minor alleged to need a guardian.**

11 Provide the following information to the extent known.

12 (a) Name:

13 (b) Age:

14 (c) Principal residence:

15 (d) Current street address (if different):

16 (e) If Petitioner anticipates the minor moving, or seeks to move the minor, proposed new address:

17 (f) Does the minor need an interpreter, translator, or other form of support to communicate with the court  
18 or understand court proceedings? If so, please explain.

19 (g) Telephone number (optional):

20 (h) Email address (optional):

21 **(3) Information about the minor's parent(s).**

22 (a) Name(s) of living parent(s):

23 (b) Current street address(es) of living parent(s):

24 (c) Does any parent need an interpreter, translator, or other form of support to communicate with the  
25 court or understand court proceedings? If so, please explain.

26 **(4) People who are required to be notified of this petition.** State the name and current address of  
27 the people listed in Appendix A.

28 **(5) Appointment requested.** State the name and address of any proposed guardian and the reason  
29 the proposed guardian should be selected.

30 **(6) State why Petitioner seeks the appointment.** Include a description of the nature and extent of the



1 minor's alleged need.

2 (7) **Property.** If the minor has property other than personal effects, state the minor's property with an  
3 estimate of its value.

4 (8) **Other proceedings.** If there are any other proceedings concerning the care or custody of the minor  
5 currently pending in any court in this state or another jurisdiction, please describe them.

6 (9) **Attorney(s).** If the minor or the minor's parent is represented by an attorney in this matter, state the  
7 name, telephone number, email address, and address of the attorney(s).

8 **SIGNATURE**

9 \_\_\_\_\_  
10 Signature of Petitioner Date

11 \_\_\_\_\_  
12 Signature of Petitioner's Attorney Date

13 if Petitioner is Represented by Counsel

14 **APPENDIX A:**

15 **People whose name and address must be listed in Section 4 of this petition if they are not the Petitioner.**

- 16 (1) The minor, if the minor is 12 years of age or older;
- 17 (2) Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;
- 18 (3) An adult with whom the minor resides;
- 19 (4) Each person that had primary care or custody of the minor for at least 60 days during the 2 years  
20 immediately before the filing of the petition or for at least 730 days during the 5 years immediately before the filing  
21 of the petition;
- 22 (5) If the minor is 12 years of age or older, any person nominated as guardian by the minor;
- 23 (6) Any person nominated as guardian by a parent of the minor;
- 24 (7) The grandparents of the minor;
- 25 (8) Adult siblings of the minor; and
- 26 (9) Any current guardian or conservator for the minor appointed in this state or another jurisdiction.

27  
28 **NEW SECTION. Section 102. Petition for guardianship, conservatorship, or protective**  
29 **arrangement.** The following form may be used to petition for:

- 30 (1) guardianship for an adult;

- 1 (2) conservatorship for an adult or minor;
- 2 (3) a protective arrangement instead of guardianship for an adult; or
- 3 (4) a protective arrangement instead of conservatorship for an adult or minor.

**Petition for Guardianship, Conservatorship, or Protective Arrangement**

5 **State of:**

6 **County of:**

7 **Name and address of attorney representing Petitioner, if applicable:**

8 **Note to Petitioner:** This form can be used to petition for a guardian, conservator, or both, or for a protective  
9 arrangement instead of either a guardianship or conservatorship. This form should not be used to petition for  
10 guardianship for a minor.

11 The court may appoint a guardian or order a protective arrangement instead of guardianship for an adult  
12 if the adult lacks the ability to meet essential requirements for physical health, safety, or self-care because (1)  
13 the adult is unable to receive and evaluate information or make or communicate decisions even with the use of  
14 supportive services, technological assistance, and supported decisionmaking, and (2) the adult's identified needs  
15 cannot be met by a less restrictive alternative.

16 The court may appoint a conservator or order a protective arrangement instead of conservatorship for  
17 an adult if (1) the adult is unable to manage property and financial affairs because of a limitation in the ability to  
18 receive and evaluate information or make or communicate decisions even with the use of supportive services,  
19 technological assistance, and supported decisionmaking or the adult is missing, detained, or unable to return to  
20 the United States, and (2) appointment is necessary to avoid harm to the adult or significant dissipation of the  
21 property of the adult, or to obtain or provide funds or other property needed for the support, care, education,  
22 health, or welfare of the adult, or of an individual who is entitled to the adult's support, and protection is necessary  
23 or desirable to provide funds or other property for that purpose.

24 The court may appoint a conservator or order a protective arrangement instead of conservatorship for  
25 a minor if (1) the minor owns funds or other property requiring management or protection that cannot otherwise  
26 be provided; or (2) it would be in the minor's best interest, and the minor has or may have financial affairs that  
27 may be put at unreasonable risk or hindered because of the minor's age, or appointment is necessary or  
28 desirable to provide funds or other property needed for the support, care, education, health, or welfare of the  
29 minor.

30 The court may also order a protective arrangement instead of conservatorship that restricts access to

1 an individual or an individual's property by a person that the court finds: (1) through fraud, coercion, duress, or  
2 the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial  
3 harm to the individual or the individual's property; and (2) poses a serious risk of substantial financial harm to the  
4 individual or the individual's property.

5 **(1) Information about the person filing this petition (the "Petitioner").**

6 (a) Name:

7 (b) Principal residence:

8 (c) Current street address (if different):

9 (d) Relationship to Respondent:

10 (e) Interest in this petition:

11 (f) Telephone number (optional):

12 (g) Email address (optional):

13 **(2) Information about the individual alleged to need protection (the "Respondent").** Provide the  
14 following information to the extent known.

15 (a) Name:

16 (b) Age:

17 (c) Principal residence:

18 (d) Current street address (if different):

19 (e) If Petitioner anticipates Respondent moving, or seeks to move Respondent, proposed new address:

20 (f) Does Respondent need an interpreter, translator, or other form of support to communicate with the  
21 court or understand court proceedings? If so, please explain.

22 (g) Telephone number (optional):

23 (h) Email address (optional):

24 **(3) People who are required to be notified of this petition.** State the name and address of the people  
25 listed in Appendix A.

26 **(4) Existing agents.** State the name and address of any person appointed as an agent under a power  
27 of attorney for finances or health care power of attorney, or who has been appointed as the individual's  
28 representative for payment of benefits.

29 **(5) Action requested.** State whether Petitioner is seeking appointment of a guardian, a conservator,  
30 or a protective arrangement instead of an appointment.

1           **(6) Order requested or appointment requested.** If seeking a protective arrangement instead of a  
2 guardianship or conservatorship, state the transaction or other action you want the court to order. If seeking  
3 appointment of a guardian or conservator, state the powers Petitioner requests the court grant to a guardian or  
4 conservator.

5           **(7) State why the appointment or protective arrangement sought is necessary.** Include a description  
6 of the nature and extent of Respondent's alleged need.

7           **(8) State all less restrictive alternatives to meeting Respondent's alleged need that have been**  
8 **considered or implemented.** Less restrictive alternatives could include supported decision making, technological  
9 assistance, or the appointment of an agent by Respondent including appointment under a health care power of  
10 attorney or power of attorney for finances. If no alternative has been considered or implemented, state the reason  
11 why not.

12           **(9) Explain why less restrictive alternatives will not meet Respondent's alleged need.**

13           **(10) Provide a general statement of Respondent's property and an estimate of its value.** Include  
14 any real property such as a house or land, insurance or pension, and the source and amount of any other  
15 anticipated income or receipts. As part of this statement, indicate, if known, how the property is titled (for example,  
16 is it jointly owned?).

17           **(11) For a petition seeking appointment of a conservator.** (skip this section if not asking for  
18 appointment of a conservator)

19           (a) If seeking appointment of a conservator with all powers permissible under this state's law, explain  
20 why appointment of a conservator with fewer powers (i.e., a "limited conservatorship") or other protective  
21 arrangement instead of conservatorship will not meet the individual's alleged needs.

22           (b) If seeking a limited conservatorship, state the property Petitioner requests be placed under the  
23 conservator's control and any proposed limitation on the conservator's powers and duties.

24           (c) State the name and address of any proposed conservator and the reason the proposed conservator  
25 should be selected.

26           (d) If Respondent is 12 years of age or older, state the name and address of any person Respondent  
27 nominates as conservator.

28           (e) If alleging a limitation in Respondent's ability to receive and evaluate information, provide a brief  
29 description of the nature and extent of Respondent's alleged limitation.

30           (f) If alleging that Respondent is missing, detained, or unable to return to the United States, state the

1 relevant circumstances, including the time and nature of the disappearance or detention and a description of any  
2 search or inquiry concerning Respondent's whereabouts.

3 **(12) For a petition seeking appointment of a guardian.** (skip this section if not asking for appointment  
4 of a guardian)

5 (a) If seeking appointment of a guardian with all powers permissible under this state's law, explain why  
6 appointment of a guardian with fewer powers (i.e., a "limited guardianship") or other protective arrangement  
7 instead of guardianship will not meet the individual's alleged needs.

8 (b) If seeking a limited guardianship, state the powers Petitioner requests be granted to the guardian.

9 (c) State the name and address of any proposed guardian and the reason the proposed guardian should  
10 be selected.

11 (d) State the name and address of any person nominated as guardian by Respondent, or, in a will or  
12 other signed writing or other record, by Respondent's parent or spouse.

13 **(13) Attorney.** If Petitioner, Respondent, or, if Respondent is a minor, Respondent's parent is  
14 represented by an attorney in this matter, state the name, telephone number, email address, and address of the  
15 attorney(s).

16 **SIGNATURE**

17 \_\_\_\_\_  
18 Signature of Petitioner Date

19 \_\_\_\_\_  
20 Signature of Petitioner's Attorney if Date

21 Petitioner is Represented by Counsel

22 **APPENDIX A:**

23 **People whose name and address must be listed in Section 3 of this petition, if they are not the Petitioner.**

24 (1) Respondent's spouse, or if Respondent has none, any adult with whom Respondent has shared  
25 household responsibilities in the past 6 months;

26 (2) Respondent's adult children, or, if Respondent has none, Respondent's parents and adult siblings,  
27 or if Respondent has none, one or more adults nearest in kinship to Respondent who can be found with  
28 reasonable diligence;

29 (3) Respondent's adult stepchildren whom Respondent actively parented during the stepchildren's minor  
30 years and with whom Respondent had an ongoing relationship within 2 years of this petition;



- 1 (4) Any person responsible for the care or custody of Respondent;  
 2 (5) Any attorney currently representing Respondent;  
 3 (6) Any representative payee for Respondent appointed by the Social Security Administration;  
 4 (7) Any current guardian or conservator for Respondent appointed in this state or another jurisdiction;  
 5 (8) Any trustee or custodian of a trust or custodianship of which Respondent is a beneficiary;  
 6 (9) Any Veterans Administration fiduciary for Respondent;  
 7 (10) Any person Respondent has designated as agent under a power of attorney for finances;  
 8 (11) Any person Respondent has designated as agent under a health care power of attorney;  
 9 (12) Any person known to have routinely assisted the individual with decisionmaking in the previous 6  
 10 months;  
 11 (13) Any person Respondent nominates as guardian or conservator; and  
 12 (14) Any person nominated as guardian by Respondent's parent or spouse in a will or other signed writing  
 13 or other record.

14  
 15 **NEW SECTION. Section 103. Notification of rights for adult subject to guardianship or**  
 16 **conservatorship.** The following form may be used to notify an adult subject to guardianship or conservatorship  
 17 of the adult's rights under [sections 48 and 68]:

18 **Notification of Rights**

19 You are getting this notice because a guardian, conservator, or both have been appointed for you. It tells  
 20 you about some important rights you have. It does not tell you about all your rights. If you have questions about  
 21 your rights, you can ask an attorney or another person, including your guardian or conservator, to help you  
 22 understand your rights.

23 **General rights:**

24 You have the right to exercise any right the court has not given to your guardian or conservator.

25 You also have the right to ask the court to:

- 26 (1) end your guardianship, conservatorship, or both;  
 27 (2) increase or decrease the powers granted to your guardian, conservator, or both;  
 28 (3) make other changes that affect what your guardian or conservator can do or how they do it; and  
 29 (4) replace the person that was appointed with someone else.

30 You also have a right to hire an attorney to help you do any of these things.

1                   **Additional rights for persons for whom a guardian has been appointed:**

2           As an adult subject to guardianship, you have a right to:

3           (1) be involved in decisions affecting you, including decisions about your care, where you live, your  
4 activities, and your social interactions, to the extent reasonably feasible;

5           (2) be involved in decisions about your health care to the extent reasonably feasible, and to have other  
6 people help you understand the risks and benefits of health care options;

7           (3) be notified at least 14 days in advance of a change in where you live or a permanent move to a  
8 nursing home, mental health facility, or other facility that places restrictions on your ability to leave or have  
9 visitors, unless the guardian has proposed this change in the guardian's plan or the court has expressly  
10 authorized it;

11           (4) ask the court to prevent your guardian from changing where you live or selling or surrendering your  
12 primary dwelling by filing a grievance in accordance with [section 26];

13           (5) vote and get married unless the court order appointing your guardian states that you cannot do so;

14           (6) receive a copy of your guardian's report and your guardian's plan; and

15           (7) communicate, visit, or interact with other people (this includes the right to have visitors, to make and  
16 receive telephone calls, personal mail, or electronic communications) unless:

17           (a) your guardian has been authorized by the court by specific order to restrict these communications,  
18 visits, or interactions;

19           (b) a protective order is in effect that limits contact between you and other people; or

20           (c) your guardian has good cause to believe the restriction is needed to protect you from significant  
21 physical, psychological, or financial harm and the restriction is for not more than 7 business days if the person  
22 has a family or preexisting social relationship with you or not more than 60 days if the person does not have that  
23 kind of relationship with you.

24                   **Additional rights for persons for whom a conservator has been appointed:**

25           As an adult subject to conservatorship, you have a right to:

26           (1) participate in decisions about how your property is managed to the extent feasible; and

27           (2) receive a copy of your conservator's inventory, report, and plan.  
28

29           **NEW SECTION. Section 104. Uniformity of application and construction.** In applying and construing  
30 [sections 1 through 105], consideration must be given to the need to promote uniformity of the law with respect

1 to its subject matter among states that enact it.

2

3 **NEW SECTION. Section 105. Relation to electronic signatures in global and national commerce**  
4 **act.** [Sections 1 through 105] modify, limit, or supersede the Electronic Signatures in Global and National  
5 Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15  
6 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15  
7 U.S.C. 7003(b).

8

9 **Section 106.** Section 7-4-3004, MCA, is amended to read:

10 **"7-4-3004. Office of public administrator.** The powers and duties of the public administrator are  
11 defined by Title 72, chapter 15, ~~and 72-5-415(2).~~"

12

13 **Section 107.** Section 19-2-803, MCA, is amended to read:

14 **"19-2-803. Payment to custodian of minor beneficiary.** (1) Except as provided in subsection (2), if  
15 any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

16

(a) a surviving parent, if any;

17

(b) a parent awarded custody of the minor in a divorce proceeding;

18

(c) a custodian designated under Title 72, chapter 26;

19

(d) a guardian appointed pursuant to Title 72, chapter 5, ~~part 2~~ [sections 27 through 37]; or

20

(e) a conservator appointed pursuant to Title 72, chapter 5, ~~part 4~~ [sections 57 through 88].

21

(2) If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title,  
22 the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement  
23 system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined  
24 under the provisions of that system, of a system member and the system member has established a trust for the  
25 dependent child, then the benefit must be paid to the trustee of that trust.

26

(3) The payment must be in full and complete discharge and acquittance of the board and system on  
27 account of the benefit. The person receiving benefit payments pursuant to this section shall account to the minor  
28 for the money when the minor reaches the age of majority."

29

30 **Section 108.** Section 20-5-320, MCA, is amended to read:



1           **"20-5-320. Attendance with discretionary approval.** (1) A child may be enrolled in and attend a school  
2 in a Montana school district that is outside of the child's district of residence or a public school in a district of  
3 another state or province that is adjacent to the county of the child's residence, subject to discretionary approval  
4 by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the  
5 child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged  
6 for transportation.

7           (2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the  
8 provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes  
9 to attend. The application must be made on an out-of-district attendance agreement form supplied by the district  
10 and developed by the superintendent of public instruction.

11           (b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs  
12 incurred for transporting the child under Title 20, chapter 10.

13           (c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the  
14 district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity  
15 and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,  
16 any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

17           (ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of  
18 residence.

19           (3) An out-of-district attendance agreement approved under this section requires that the parent or  
20 guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district  
21 of residence and the district of choice approve the agreement.

22           (4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not  
23 required.

24           (5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement  
25 consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance  
26 agreements.

27           (6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the  
28 result of an appeal must authorize the child named in the agreement to enroll in and attend the school named  
29 in the agreement for the designated school year.

30           (7) The trustees of the district where the child wishes to attend have the discretion to approve any

1 attendance agreement.

2 (8) This section does not preclude the trustees of a district from approving an attendance agreement for  
3 educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8  
4 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and  
5 transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the  
6 out-of-district agreement.

7 (9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child,  
8 at personal expense, to any school of a district other than the resident district when the trustees of the district of  
9 choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the  
10 tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the  
11 amount that the parent or guardian of the child paid in district property taxes during the immediately preceding  
12 school fiscal year for the benefit and support of the district in which the child will attend school.

13 (b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic  
14 corporation as defined in 35-1-113 whose shares are 95% held by related family members to the sixth degree  
15 of consanguinity or by marriage to the sixth degree of affinity.

16 (c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection  
17 (9)(a) is determined in the following manner:

18 (i) determine the percentage of the total shares of the corporation held by the shareholder parent or  
19 parents or guardian;

20 (ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation,  
21 parent, or guardian for the benefit and support of the district in which the child will attend school.

22 (d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid  
23 as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

24 (10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as  
25 provided in Title 72, chapter 5, ~~part 2~~ [sections 27 through 37]."

26

27 **Section 109.** Section 30-10-103, MCA, is amended to read:

28 **"30-10-103. (Temporary) Definitions.** When used in parts 1 through 3 and 10 of this chapter, unless  
29 the context requires otherwise, the following definitions apply:

30 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities

1 for the account of others or for the person's own account.

2 (b) The term does not include:

3 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

4 (ii) a person who does not have a place of business in this state if the person effects transactions in this  
5 state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers,  
6 or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the  
7 Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional  
8 buyers, whether acting for themselves or as trustee.

9 (2) "Commissioner" means the securities commissioner provided for in 2-15-1901.

10 (3) (a) "Commodity" means:

11 (i) any agricultural, grain, or livestock product or byproduct;

12 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as  
13 precious, semiprecious, or otherwise;

14 (iii) any fuel, whether liquid, gaseous, or otherwise;

15 (iv) foreign currency; and

16 (v) all other goods, articles, products, or items of any kind.

17 (b) Commodity does not include:

18 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

19 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property and  
20 offered and sold by the owner or lessee of the real property; or

21 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private  
22 sale by the owner.

23 (4) "Commodity Exchange Act" means the federal statute of that name.

24 (5) "Commodity futures trading commission" means the independent regulatory agency established by  
25 congress to administer the Commodity Exchange Act.

26 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase  
27 or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or  
28 purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is  
29 intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery  
30 contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any

1 commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be  
2 offered or sold for speculation or investment purposes.

3 (b) A commodity investment contract does not include a contract or agreement that requires, and under  
4 which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the  
5 purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or  
6 agreement. The purchaser is not considered to have received physical delivery of the total amount of each  
7 commodity to be purchased under the contract or agreement when the commodity or commodities are held as  
8 collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the  
9 purchase of each commodity or commodities.

10 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account,  
11 agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more  
12 commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance  
13 guaranty, decline guaranty, or otherwise.

14 (b) The term does not include an option traded on a national securities exchange registered with the U.S.  
15 securities and exchange commission.

16 (8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment  
17 Advisers Act of 1940.

18 (b) A federal covered adviser is not an investment adviser as defined in subsection (12).

19 (9) "Federal covered security" means a security that is a covered security under section 18(b) of the  
20 Securities Act of 1933 or rules promulgated by the commissioner.

21 (10) "Financial exploitation" means:

22 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property  
23 of a vulnerable person; or

24 (b) an act or omission taken by a person, including through the use of a power of attorney, guardianship,  
25 protective arrangement under [sections 89 through 99], or conservatorship of a vulnerable person, to:

26 (i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable  
27 person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or  
28 possession of the vulnerable person's money, assets, or property; or

29 (ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the  
30 ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

1 (11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

2 (12) (a) "Investment adviser" means a person who, for compensation, engages in the business of  
3 advising others, either directly or through publications or writings, as to the value of securities or as to the  
4 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular  
5 business, issues or promulgates analyses or reports concerning securities.

6 (b) The term includes a financial planner or other person who:

7 (i) as an integral component of other financially related services, provides the investment advisory  
8 services described in subsection (12)(a) to others for compensation, as part of a business; or

9 (ii) represents to any person that the financial planner or other person provides the investment advisory  
10 services described in subsection (12)(a) to others for compensation.

11 (c) The term does not include:

12 (i) an investment adviser representative;

13 (ii) a bank, savings institution, trust company, or insurance company;

14 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the  
15 person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral,  
16 or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the  
17 purchase or sale of specific securities, and does not have custody of client funds or securities for investment  
18 purposes;

19 (iv) a registered broker-dealer whose performance of services described in subsection (12)(a) is solely  
20 incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

21 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial  
22 publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does  
23 not consist of the rendering of advice on the basis of the specific investment situation of each client;

24 (vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

25 (vii) an engineer or teacher whose performance of the services described in subsection (12)(a) is solely  
26 incidental to the practice of the person's profession;

27 (viii) a federal covered adviser; or

28 (ix) other persons not within the intent of this subsection (12) as the commissioner may by rule or order  
29 designate.

30 (13) (a) "Investment adviser representative" means:

1 (i) any partner of, officer of, director of, or a person occupying a similar status or performing similar  
2 functions, or other individual, except clerical or ministerial personnel, employed by or associated with an  
3 investment adviser who:

4 (A) makes any recommendation or otherwise renders advice regarding securities to clients;

5 (B) manages accounts or portfolios of clients;

6 (C) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

7 (D) supervises employees who perform any of the foregoing; and

8 (ii) with respect to a federal covered adviser, any person who is an investment adviser representative with  
9 a place of business in this state as those terms are defined by the securities and exchange commission under  
10 the Investment Advisers Act of 1940.

11 (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance  
12 of the services described in subsection (13)(a) of this section is solely incidental to the conduct of business as  
13 a salesperson and for which the salesperson does not receive special compensation other than fees relating to  
14 the solicitation or offering of investment advisory services of a registered investment adviser or of a federal  
15 covered adviser who has made a notice filing under parts 1 through 3 and 10 of this chapter.

16 (14) "Issuer" means any person who issues or proposes to issue any security, except that with respect  
17 to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of  
18 interest or shares in an unincorporated investment trust not having a board of directors, or persons performing  
19 similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or  
20 persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the  
21 trust or other agreement or instrument under which the security is issued.

22 (15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

23 (16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy  
24 a security or interest in a security for value.

25 (17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company,  
26 a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a  
27 government, or a political subdivision of a government.

28 (18) "Precious metal" means the following, in coin, bullion, or other form:

29 (a) silver;

30 (b) gold;

1 (c) platinum;

2 (d) palladium;

3 (e) copper; and

4 (f) other items as the commissioner may by rule or order specify.

5 (19) "Qualified individual" means a person who serves in a supervisory, compliance, or legal capacity for  
6 a broker-dealer or investment adviser.

7 (20) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

8 (21) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or  
9 interest in a security for value.

10 (22) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer  
11 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer  
12 or issuer is a salesperson only if the person otherwise comes within this definition.

13 (b) Salesperson does not include an individual who represents:

14 (i) an issuer in:

15 (A) effecting a transaction in a security exempted by 30-10-104(1) through (3) or (8) through (11);

16 (B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant  
17 to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

18 (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities  
19 Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a  
20 prospective buyer; or

21 (D) effecting transactions with existing employees, partners, or directors of the issuer if no commission  
22 or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

23 (ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the  
24 Securities Exchange Act of 1934.

25 (23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment  
26 Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

27 (24) (a) "Security" means any:

28 (i) note;

29 (ii) stock;

30 (iii) treasury stock;

- 1 (iv) bond;
- 2 (v) commodity investment contract;
- 3 (vi) commodity option;
- 4 (vii) debenture;
- 5 (viii) evidence of indebtedness;
- 6 (ix) certificate of interest or participation in any profit-sharing agreement;
- 7 (x) collateral-trust certificate;
- 8 (xi) preorganization certificate or subscription;
- 9 (xii) transferable shares;
- 10 (xiii) investment contract;
- 11 (xiv) voting-trust certificate;
- 12 (xv) certificate of deposit for a security;
- 13 (xvi) viatical settlement purchase agreement;
- 14 (xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of
- 15 production under a title or lease; or
- 16 (xviii) in general:
- 17 (A) interest or instrument commonly known as a security;
- 18 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of
- 19 securities, including any interest in a security or based on the value of a security; or
- 20 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,
- 21 or warrant or right to subscribe to or purchase any of the items in this subsection (24)(a)(xviii).
- 22 (b) Security does not include an insurance or endowment policy or annuity contract under which an
- 23 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some
- 24 other specified period.
- 25 (25) "State" means any state, territory, or possession of the United States, as well as the District of
- 26 Columbia and Puerto Rico.
- 27 (26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
- 28 and "offer".
- 29 (27) "Vulnerable person" means:
- 30 (a) a person who is at least 60 years of age;



1 (b) a person who suffers from mental impairment because of frailties or dependencies typically related  
2 to advanced age, such as dementia or memory loss;

3 (c) a person who has a developmental disability as defined in 53-20-102; or

4 (d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means  
5 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or  
6 volitional functions. The term does not include:

7 (i) addiction to drugs or alcohol;

8 (ii) drug or alcohol intoxication;

9 (iii) intellectual disability; or

10 (iv) epilepsy. (Terminates June 30, 2021--sec. 55, Ch. 151, L. 2017.)

11 **30-10-103. (Effective July 1, 2021) Definitions.** When used in parts 1 through 3 of this chapter, unless  
12 the context requires otherwise, the following definitions apply:

13 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities  
14 for the account of others or for the person's own account.

15 (b) The term does not include:

16 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

17 (ii) a person who does not have a place of business in this state if the person effects transactions in this  
18 state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers,  
19 or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the  
20 Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional  
21 buyers, whether acting for themselves or as trustee.

22 (2) "Commissioner" means the securities commissioner of this state.

23 (3) (a) "Commodity" means:

24 (i) any agricultural, grain, or livestock product or byproduct;

25 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as  
26 precious, semiprecious, or otherwise;

27 (iii) any fuel, whether liquid, gaseous, or otherwise;

28 (iv) foreign currency; and

29 (v) all other goods, articles, products, or items of any kind.

30 (b) Commodity does not include:

1 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;  
2 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property and  
3 offered and sold by the owner or lessee of the real property; or

4 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private  
5 sale by the owner.

6 (4) "Commodity Exchange Act" means the federal statute of that name.

7 (5) "Commodity futures trading commission" means the independent regulatory agency established by  
8 congress to administer the Commodity Exchange Act.

9 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase  
10 or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or  
11 purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is  
12 intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery  
13 contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any  
14 commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be  
15 offered or sold for speculation or investment purposes.

16 (b) A commodity investment contract does not include a contract or agreement that requires, and under  
17 which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the  
18 purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or  
19 agreement. The purchaser is not considered to have received physical delivery of the total amount of each  
20 commodity to be purchased under the contract or agreement when the commodity or commodities are held as  
21 collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the  
22 purchase of each commodity or commodities.

23 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account,  
24 agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more  
25 commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance  
26 guaranty, decline guaranty, or otherwise.

27 (b) The term does not include an option traded on a national securities exchange registered with the U.S.  
28 securities and exchange commission.

29 (8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment  
30 Advisers Act of 1940.

1 (b) A federal covered adviser is not an investment adviser as defined in subsection (12).

2 (9) "Federal covered security" means a security that is a covered security under section 18(b) of the  
3 Securities Act of 1933 or rules promulgated by the commissioner.

4 (10) "Financial exploitation" means:

5 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property  
6 of a vulnerable person; or

7 (b) an act or omission taken by a person, including through the use of a power of attorney, guardianship,  
8 protective arrangement under [sections 89 through 99], or conservatorship of a vulnerable person, to:

9 (i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable  
10 person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or  
11 possession of the vulnerable person's money, assets, or property; or

12 (ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the  
13 ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

14 (11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

15 (12) (a) "Investment adviser" means a person who, for compensation, engages in the business of  
16 advising others, either directly or through publications or writings, as to the value of securities or as to the  
17 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular  
18 business, issues or promulgates analyses or reports concerning securities.

19 (b) The term includes a financial planner or other person who:

20 (i) as an integral component of other financially related services, provides the investment advisory  
21 services described in subsection (12)(a) to others for compensation, as part of a business; or

22 (ii) represents to any person that the financial planner or other person provides the investment advisory  
23 services described in subsection (12)(a) to others for compensation.

24 (c) The term does not include:

25 (i) an investment adviser representative;

26 (ii) a bank, savings institution, trust company, or insurance company;

27 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the  
28 person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral,  
29 or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the  
30 purchase or sale of specific securities, and does not have custody of client funds or securities for investment

1 purposes;

2 (iv) a registered broker-dealer whose performance of services described in subsection (12)(a) is solely  
3 incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

4 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial  
5 publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does  
6 not consist of the rendering of advice on the basis of the specific investment situation of each client;

7 (vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

8 (vii) an engineer or teacher whose performance of the services described in subsection (12)(a) is solely  
9 incidental to the practice of the person's profession;

10 (viii) a federal covered adviser; or

11 (ix) other persons not within the intent of this subsection (12) as the commissioner may by rule or order  
12 designate.

13 (13) (a) "Investment adviser representative" means:

14 (i) any partner of, officer of, director of, or a person occupying a similar status or performing similar  
15 functions, or other individual, except clerical or ministerial personnel, employed by or associated with an  
16 investment adviser who:

17 (A) makes any recommendation or otherwise renders advice regarding securities to clients;

18 (B) manages accounts or portfolios of clients;

19 (C) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

20 (D) supervises employees who perform any of the foregoing; and

21 (ii) with respect to a federal covered adviser, any person who is an investment adviser representative with  
22 a place of business in this state as those terms are defined by the securities and exchange commission under  
23 the Investment Advisers Act of 1940.

24 (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance  
25 of the services described in subsection (13)(a) of this section is solely incidental to the conduct of business as  
26 a salesperson and for which the salesperson does not receive special compensation other than fees relating to  
27 the solicitation or offering of investment advisory services of a registered investment adviser or of a federal  
28 covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

29 (14) "Issuer" means any person who issues or proposes to issue any security, except that with respect  
30 to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of

1 interest or shares in an unincorporated investment trust not having a board of directors, or persons performing  
2 similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or  
3 persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the  
4 trust or other agreement or instrument under which the security is issued.

5 (15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

6 (16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy  
7 a security or interest in a security for value.

8 (17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company,  
9 a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a  
10 government, or a political subdivision of a government.

11 (18) "Precious metal" means the following, in coin, bullion, or other form:

12 (a) silver;

13 (b) gold;

14 (c) platinum;

15 (d) palladium;

16 (e) copper; and

17 (f) other items as the commissioner may by rule or order specify.

18 (19) "Qualified individual" means a person who serves in a supervisory, compliance, or legal capacity for  
19 a broker-dealer or investment adviser.

20 (20) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

21 (21) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or  
22 interest in a security for value.

23 (22) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer  
24 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer  
25 or issuer is a salesperson only if the person otherwise comes within this definition.

26 (b) Salesperson does not include an individual who represents:

27 (i) an issuer in:

28 (A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

29 (B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant  
30 to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

- 1 (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities  
2 Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a  
3 prospective buyer; or
- 4 (D) effecting transactions with existing employees, partners, or directors of the issuer if no commission  
5 or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
- 6 (ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the  
7 Securities Exchange Act of 1934.
- 8 (23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment  
9 Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.
- 10 (24) (a) "Security" means any:
- 11 (i) note;
- 12 (ii) stock;
- 13 (iii) treasury stock;
- 14 (iv) bond;
- 15 (v) commodity investment contract;
- 16 (vi) commodity option;
- 17 (vii) debenture;
- 18 (viii) evidence of indebtedness;
- 19 (ix) certificate of interest or participation in any profit-sharing agreement;
- 20 (x) collateral-trust certificate;
- 21 (xi) preorganization certificate or subscription;
- 22 (xii) transferable shares;
- 23 (xiii) investment contract;
- 24 (xiv) voting-trust certificate;
- 25 (xv) certificate of deposit for a security;
- 26 (xvi) viatical settlement purchase agreement;
- 27 (xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of  
28 production under a title or lease; or
- 29 (xviii) in general:
- 30 (A) interest or instrument commonly known as a security;

1 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of  
2 securities, including any interest in a security or based on the value of a security; or

3 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,  
4 or warrant or right to subscribe to or purchase any of the items in this subsection (24)(a)(xviii).

5 (b) Security does not include an insurance or endowment policy or annuity contract under which an  
6 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some  
7 other specified period.

8 (25) "State" means any state, territory, or possession of the United States, as well as the District of  
9 Columbia and Puerto Rico.

10 (26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",  
11 and "offer".

12 (27) "Vulnerable person" means:

13 (a) a person who is at least 60 years of age;

14 (b) a person who suffers from mental impairment because of frailties or dependencies typically related  
15 to advanced age, such as dementia or memory loss;

16 (c) a person who has a developmental disability as defined in 53-20-102; or

17 (d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means  
18 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or  
19 volitional functions. The term does not include:

20 (i) addiction to drugs or alcohol;

21 (ii) drug or alcohol intoxication;

22 (iii) intellectual disability; or

23 (iv) epilepsy."  
24

25 **Section 110.** Section 40-6-602, MCA, is amended to read:

26 **"40-6-602. Caretaker relative rights upon return of parent -- continuing custody affidavit -- review,**  
27 **finding, and order by district court -- limited reconsideration -- immunity.** (1) If custody of a child has been  
28 voluntarily given to a relative of the child by a parent of the child and the child has remained with that relative for  
29 at least 6 months under circumstances in which it is unclear whether or when the parent will return and retake  
30 custody of the child, the provisions of this section apply unless, during that 6-month period, the parent expresses

1 to the relative a firm intention and a date on which the parent will return and resume custody of the child and  
2 subsequently adheres to that schedule.

3 (2) Upon a return of the parent and an expression by the parent of an intent by that parent to reassert  
4 the parent's right of custody and control over the child, the caretaker relative may file, without payment of a filing  
5 fee, with the district court in the county of the relative's residence a detailed affidavit as provided in this section.  
6 The affidavit must contain the following matters, the exclusion of any of which makes the affidavit void:

7 (a) the identification of:

8 (i) the caretaker relative, including the relative's address;

9 (ii) the child in the custody of the relative; and

10 (iii) the parent demanding custody of the child, including the parent's address, if known;

11 (b) a statement of the facts, as nearly as can be determined, of:

12 (i) the date, time, and circumstances surrounding the voluntary surrender of the custody of the child to  
13 the caretaker relative, including any conversation between the relative and the parent concerning the purpose  
14 of the parent's absence and when the parent would return and resume custody of the child;

15 (ii) the reason for the surrender of the child to the relative, as far as is known by the relative;

16 (iii) the efforts made by the relative to care for the child, including:

17 (A) facts explaining the nature and permanency or stability of the home provided by the relative for the  
18 child;

19 (B) the schooling of the child while in the relative's custody; and

20 (C) the socialization of the child with other children and adults, both inside and outside the family of the  
21 caretaker relative; and

22 (iv) whether any contact was made by the child's parent with the relative, the child, or both, during the  
23 absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation  
24 between the relative and the parent concerning when the parent would return and resume custody of the child;

25 (c) a statement by the caretaker relative as to:

26 (i) why the relative wishes to maintain custody of the child; and

27 (ii) how the relative has offered and will continue to offer continuity of care by providing permanency or  
28 stability in residence, schooling, and activities outside of the home;

29 (d) a warning, in at least 14-point type, to the caretaker relative in the following language: "WARNING:  
30 DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT OR



1 YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH"; and

2 (e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made  
3 under oath and under penalty of the laws of Montana governing the giving of false sworn testimony and that the  
4 information stated by the caretaker relative in the affidavit is true and correct.

5 (3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the  
6 child's parent, if the address or location of the parent is known to the relative, and may be provided to the  
7 department of public health and human services. A caretaker relative may maintain temporary custody of the child  
8 for 5 days following the return of the parent and the demand by the parent for custody of the child pending  
9 completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may  
10 not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon  
11 petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall  
12 require, that:

13 (a) the child has not been in the custody of the caretaker relative for at least 6 months;

14 (b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody  
15 of the relative; or

16 (c) the action by the caretaker relative to make and file the affidavit with the district court in accordance  
17 with this section was not made in good faith.

18 (4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department may  
19 proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.

20 (5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and  
21 determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's  
22 parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's  
23 parent, the court shall within 3 business days of its determination of prima facie evidence enter appropriate  
24 findings of fact concerning the abandonment and enter an ex parte order approving and ordering continued  
25 custody and control of the child by the caretaker relative. An order of the district court pursuant to this subsection  
26 approving and ordering continued custody by the caretaker relative is effective for 14 days following entry of the  
27 order.

28 (b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by  
29 the parent, the court shall within 3 business days of its determination make appropriate findings of fact and order  
30 the child returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative

1 shall surrender the custody and control of the child to the child's parent.

2 (c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may  
3 commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the  
4 minor under ~~72-5-225~~ [section 28].

5 (6) Upon entry of an order by the district court pursuant to subsection (5)(a), a copy of the order must  
6 be sent to the child's parent, if the address of the parent is known.

7 (7) The child's parent may, after receipt of the court's findings and order ordering continued custody of  
8 a child by a caretaker relative, apply to the court, upon notice to the caretaker relative as the court shall provide,  
9 for a reconsideration of the court's order approving continued custody of the child by the relative. The court shall  
10 reconsider its order and may reverse its order based upon presentation of evidence of nonabandonment. Pending  
11 a reconsideration pursuant to this subsection, custody of the child must remain with the relative unless the order  
12 of the district court approving that custody expires or a court has ordered a change of custody pursuant to  
13 subsection (3).

14 (8) (a) A caretaker relative refusing to surrender custody of a child while acting in good faith and in  
15 accordance with this section is immune from civil or criminal action brought because of that refusal.

16 (b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative  
17 in accordance with this section and the entity employing the officer is immune from civil or criminal action or  
18 professional discipline brought because of the taking of or refusal to take custody of the child.

19 (9) Subject to availability of appropriations, the attorney general shall prepare a form for the affidavit  
20 provided for in this section and shall distribute the form as the attorney general determines appropriate."  
21

22 **Section 111.** Section 41-3-444, MCA, is amended to read:

23 **"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies.** (1)  
24 The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian  
25 for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438,  
26 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the  
27 guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

28 (2) The court may appoint a guardian for a child pursuant to this section if the following facts are found  
29 by the court:

30 (a) the department has given its written consent to the appointment of the guardian, whether the

1 guardianship is to be subsidized or not;

2 (b) if the guardianship is to be subsidized, the department has given its written consent after the  
3 department has considered initiating or continuing financial subsidies pursuant to subsection (9);

4 (c) the child has been adjudicated a youth in need of care;

5 (d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite  
6 the parent and child by the department would likely be unproductive, and reunification of the parent and child  
7 would be contrary to the best interests of the child;

8 (e) the child has lived with the potential guardian in a family setting and the potential guardian is  
9 committed to providing a long-term relationship with the child;

10 (f) it is in the best interests of the child to remain or be placed with the potential guardian;

11 (g) either termination of parental rights to the child is not in the child's best interests or parental rights  
12 to the child have been terminated, but adoption is not in the child's best interests; and

13 (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined  
14 in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state  
15 of the initiation of the proceedings.

16 (3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's  
17 extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with  
18 the extended family member is in the best interests of the child. If more than one extended family member has  
19 requested to be appointed as guardian, the court may determine which extended family member to appoint in  
20 the same manner provided for in 41-3-438(4).

21 (4) The entry of a decree of guardianship pursuant to this section terminates the custody of the  
22 department and the involvement of the department with the child and the child's parents except for the  
23 department's provision of a financial subsidy, if any, pursuant to subsection (9).

24 (5) A guardian appointed under this section may exercise the powers and has the duties provided in  
25 ~~72-5-234~~ [sections 35 and 36].

26 (6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing  
27 on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests  
28 of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian,  
29 the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been  
30 terminated, and other persons directly interested in the welfare of the child.

1 (7) A guardian may petition the court for permission to resign the guardianship. A petition may include  
2 a request for appointment of a successor guardian.

3 (8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a  
4 successor guardian or may terminate the guardianship and restore temporary legal custody to the department  
5 pursuant to 41-3-438.

6 (9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if  
7 the guardianship meets the department's criteria and if the department determines that a subsidy is in the best  
8 interests of the child. The amount of the subsidy must be determined by the department.

9 (10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."  
10

11 **Section 112.** Section 47-1-104, MCA, is amended to read:

12 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**  
13 **expense.** (1) There is a statewide public defender system, which is required to deliver public defender services  
14 in all courts in this state. The system is supervised by the director.

15 (2) The director shall approve a strategic plan for service delivery and divide the state into not more than  
16 11 public defender regions. The director may establish a regional office to provide public defender services in  
17 each region, as provided in 47-1-215, establish a contracted services program to provide services in the region,  
18 or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

19 (3) When a court orders the assignment of a public defender, the appropriate office shall immediately  
20 assign a public defender qualified to provide the required services. The director shall establish protocols to ensure  
21 that the offices make appropriate assignments in a timely manner.

22 (4) A court may order assignment of a public defender under this chapter in the following cases:

23 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial  
24 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

25 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of  
26 incarceration, as provided in 46-8-101;

27 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
28 40-6-119;

29 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
30 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child

- 1 Welfare Act, as provided in 41-3-425;
- 2 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 3 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 4 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 5 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
- 6 disabled person to a residential facility, as provided in 53-20-112;
- 7 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in
- 8 53-21-116;
- 9 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
- 10 provided in 53-24-302; ~~and~~
- 11 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304; and
- 12 (xi) for a person entitled to counsel under the provisions of Title 72, chapter 5.
- 13 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless
- 14 of the person's financial ability to retain private counsel, as follows:
- 15 (i) as provided for in 41-3-425;
- 16 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in
- 17 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution
- 18 Act, as provided in 41-5-1607;
- 19 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,
- 20 as provided in 41-6-101;
- 21 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent
- 22 for Abortion Act of 2013, as provided in 50-20-509;
- 23 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
- 24 person to a residential facility, as provided in 53-20-112; and
- 25 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112; and
- 26 ~~(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a~~
- 27 ~~proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;~~
- 28 ~~———(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental~~
- 29 ~~disorder of the ward, as provided in 72-5-322; and~~
- 30 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

1 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a  
 2 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
 3 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

4 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender  
 5 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a  
 6 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the  
 7 statewide public defender system and does not result in a conflict of interest."

8

9 **Section 113.** Section 47-1-110, MCA, is amended to read:

10 **"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue  
 11 fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this  
 12 chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in  
 13 the account may be used only for the operation of the system.

14 (2) Money to be deposited in the account also includes:

15 (a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a  
 16 sentence in a criminal case;

17 (b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

18 (c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as  
 19 payment for public defender costs pursuant to 53-9-104; and

20 (d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate  
 21 Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally  
 22 disabled person when the respondent person for whom counsel was appointed is determined to have the financial  
 23 ability to pay for a public defender and a judge orders payment under 47-1-111.

24 (3) By August 1 of each year, the state treasurer shall transfer the unencumbered balance in the public  
 25 defender account to the state general fund."

26

27 **Section 114.** Section 50-5-1305, MCA, is amended to read:

28 **"50-5-1305. Treatment guidelines when health care providers serve as proxy decisionmakers.** (1)  
 29 The attending health care provider and a health care provider appointed pursuant to 50-5-1304 to serve as a  
 30 medical proxy decisionmaker shall adhere to the following guidelines for proxy decisionmaking:

1 (a) for routine treatments and procedures that are low-risk and within broadly accepted standards of  
2 medical practice, the attending health care provider may make health care treatment decisions;

3 (b) for treatment involving anesthesia, invasive procedures, significant risk of complications, or otherwise  
4 requiring written, informed consent, the attending health care provider shall obtain the written consent of the  
5 medical proxy decisionmaker;

6 (c) for end-of-life treatment that is nonbeneficial and involves withholding or withdrawing specific medical  
7 treatments, the attending health care provider shall obtain:

8 (i) an independent concurring opinion from a physician or advanced practice registered nurse other than  
9 the medical proxy decisionmaker;

10 (ii) a consensus with the medical ethics committee, if available; and

11 (iii) a consensus with the health care facility's chaplain if a medical ethics committee is not available.

12 (2) Artificial nourishment and hydration may be withheld or withdrawn from a patient upon a decision of  
13 a physician or advanced practice registered nurse serving as a medical proxy decisionmaker only when the  
14 attending health care provider and an independent physician trained in neurology or neurosurgery certify in the  
15 patient's medical record that the provision or continuation of artificial nourishment or hydration cannot reasonably  
16 be expected to prolong life, would be excessively burdensome for the patient, or would cause the patient  
17 significant physical discomfort, such as from complications from the procedures used.

18 (3) (a) Nothing in this part may be construed as condoning, authorizing, or approving euthanasia or  
19 mercy killing.

20 (b) Nothing in this part may be construed as permitting an affirmative or deliberate act to end a person's  
21 life except to permit natural death.

22 (4) When a lay or medical proxy decisionmaker has not been appointed and the attending health care  
23 provider determines that a patient requires end-of-life treatment that includes artificial nourishment and hydration,  
24 before a lay or medical proxy decisionmaker may be appointed the attending health care provider or health care  
25 facility shall petition the court to have ~~a temporary~~ an emergency guardian appointed as provided in ~~72-5-317~~  
26 [section 49]. If the petition to have ~~a temporary~~ an emergency guardian appointed is not timely or successful  
27 considering the exigencies of the situation, a lay or medical proxy decisionmaker may be appointed."  
28

29 **Section 115.** Section 50-9-106, MCA, is amended to read:

30 **"50-9-106. Consent by others to withholding or withdrawal of treatment.** (1) If a written consent to

1 the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician  
2 or attending advanced practice registered nurse, the attending physician or attending advanced practice  
3 registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

4 (a) has been determined by the attending physician or attending advanced practice registered nurse to  
5 be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining  
6 treatment; and

7 (b) has no effective declaration.

8 (2) The authority to consent or to withhold consent under subsection (1) may be exercised by the  
9 following individuals, in order of priority:

10 (a) the spouse of the individual;

11 (b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children  
12 who are reasonably available for consultation;

13 (c) the parents of the individual;

14 (d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult  
15 siblings who are reasonably available for consultation; or

16 (e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for  
17 consultation.

18 (3) A full guardian may consent or withhold consent under subsection (1) as provided in ~~72-5-324~~  
19 [section 52].

20 (4) If a class entitled to decide whether to consent is not reasonably available for consultation and  
21 competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division  
22 in a class does not authorize the next class to decide.

23 (5) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts  
24 with the expressed intention of the individual.

25 (6) A decision of the attending physician or attending advanced practice registered nurse acting in good  
26 faith that a consent is valid or invalid is conclusive.

27 (7) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual  
28 known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it  
29 is probable that the fetus will develop to the point of live birth with continued application of life-sustaining  
30 treatment."



1

2           **Section 116.** Section 52-3-207, MCA, is amended to read:

3           **"52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision of  
4 protective services does not create a guardianship or conservatorship relationship between the department and  
5 the aged person or disabled adult unless a guardianship or conservatorship is created in accordance with the  
6 requirements of Title 72, chapter 5, ~~part 3 or 4~~.

7           (2) The department may not provide protective services that impose a legal limitation or restriction on  
8 an aged person or a disabled adult:

9           (a) except emergency protective services provided under 52-3-804; or

10           (b) unless the department has been appointed legal guardian or conservator for that person under the  
11 provisions of Title 72, chapter 5, ~~part 3 or 4~~."

12

13           **Section 117.** Section 52-3-803, MCA, is amended to read:

14           **"52-3-803. Definitions.** As used in this part, the following definitions apply:

15           (1) "Abuse" means:

16           (a) the infliction of physical or mental injury; or

17           (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental  
18 health of an older person or a person with a developmental disability without lawful authority. A declaration made  
19 pursuant to 50-9-103 constitutes lawful authority.

20           (2) "Department" means the department of public health and human services provided for in 2-15-2201.

21           (3) "Exploitation" means:

22           (a) the unreasonable use of an older person or a person with a developmental disability or of a power  
23 of attorney, conservatorship, protective arrangement under [sections 89 through 99], or guardianship with regard  
24 to an older person or a person with a developmental disability in order to obtain control of or to divert to the  
25 advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or  
26 property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result  
27 of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit,  
28 or possession of or interest in the person's money, assets, or property;

29           (b) an act taken by a person who has the trust and confidence of an older person or a person with a  
30 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,

1 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,  
2 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person  
3 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,  
4 assets, or property;

5 (c) the unreasonable use of an older person or a person with a developmental disability or of a power  
6 of attorney, conservatorship, protective arrangement under [sections 89 through 99], or guardianship with regard  
7 to an older person or a person with a developmental disability done in the course of an offer or sale of insurance  
8 or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or  
9 possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue  
10 influence, or intimidation with the intent or result of permanently depriving the older person or person with a  
11 developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

12 (4) "Incapacitated person" has the meaning given in 72-5-101.

13 (5) "Long-term care facility" means a facility defined in 50-5-101.

14 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or  
15 psychological functioning or well-being.

16 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual  
17 obligation for caring for an older person or a person with a developmental disability or who has voluntarily  
18 assumed responsibility for the person's care, including an employee of a public or private residential institution,  
19 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or  
20 mental health of the older person or the person with a developmental disability.

21 (8) "Older person" means a person who is at least 60 years of age.

22 (9) "Person with a developmental disability" means a person 18 years of age or older who has a  
23 developmental disability, as defined in 53-20-102.

24 (10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily  
25 organ or function.

26 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
27 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter  
28 5, part 5, and Title 45, chapter 8, part 2."

29

30 **Section 118.** Section 52-3-804, MCA, is amended to read:

1           **"52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual abuse,  
2 neglect, or exploitation received pursuant to 52-3-811(1)(a).

3           (2) The department shall prepare an annual report of the information obtained pursuant to the reporting  
4 requirement of this part.

5           (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part  
6 2, for an older person or a person with a developmental disability alleged to have been abused, sexually abused,  
7 neglected, or exploited.

8           (4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or  
9 the person's caretaker refuses to allow a representative of the department entrance to the premises for the  
10 purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the  
11 person is found may order a law enforcement officer or a department social worker to enter the premises to  
12 conduct an investigation upon finding that there is probable cause to believe that the person is abused, sexually  
13 abused, neglected, or exploited.

14           (5) If a representative of the department has reasonable grounds to believe that an older person or a  
15 person with a developmental disability alleged to be abused, sexually abused, neglected, or exploited is suffering  
16 from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of death or serious physical  
17 injury, the department may:

18           (a) provide voluntary protective services as provided in subsection (3); or

19           (b) if the department representative has reasonable grounds to believe that the person is incapacitated,  
20 provide emergency protective services as follows:

21           (i) arrange or facilitate an appropriate emergency protective service placement;

22           (ii) transport or arrange for the transport of the person to the appropriate placement;

23           (iii) not later than 2 judicial days following placement of the person, either:

24           (A) provide voluntary protective services as provided under subsection (3); or

25           (B) petition the district court to act as ~~temporary~~ emergency guardian or appoint ~~a temporary an~~  
26 emergency guardian as provided in ~~72-5-317~~ [section 49]."

27

28           **Section 119.** Section 72-1-103, MCA, is amended to read:

29           **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters  
30 that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters

1 1 through 6, the following definitions apply:

2 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual  
3 authorized to make decisions concerning another's health care, and an individual authorized to make decisions  
4 for another under a natural death act.

5 (2) "Application" means a written request to the clerk for an order of informal probate or appointment  
6 under chapter 3, part 2.

7 (3) "Beneficiary", as it relates to:

8 (a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent,  
9 and also includes the owner of an interest by assignment or other transfer;

10 (b) a charitable trust, includes any person entitled to enforce the trust;

11 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

12 (i) an account with POD designation or a security registered in beneficiary form (TOD); or

13 (ii) any other nonprobate transfer at death; and

14 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust  
15 beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney  
16 or a power held in any individual, fiduciary, or representative capacity is exercised.

17 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

18 (a) an account with POD designation or a security registered in beneficiary form (TOD); or

19 (b) any other nonprobate transfer at death.

20 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate  
21 succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster  
22 child, a grandchild, or any more remote descendant.

23 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the  
24 decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that  
25 arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses  
26 and expenses of administration.

27 (b) The term does not include estate taxes or demands or disputes regarding title of a decedent or  
28 protected person to specific assets alleged to be included in the estate.

29 (7) "Clerk" or "clerk of court" means the clerk of the district court.

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

1 ~~person has the meaning provided in [section 2].~~

2 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of  
3 decedents.

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

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

9 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the  
10 case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the  
11 devisee and the beneficiaries are not devisees.

12 (13) "Disability" means cause for ~~a protective order as described by 72-5-409~~ appointing a conservator  
13 or ordering a protective arrangement instead of a conservatorship.

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

20 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to  
21 chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

22 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

23 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

24 (18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

25 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested  
26 persons.

27 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD  
28 designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit  
29 plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive,  
30 or nominative instrument of any similar type.

1 (21) "Guardian" ~~means a person who has qualified as a guardian of a minor or incapacitated person~~  
2 ~~pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem~~ has the  
3 meaning provided in [section 2].

4 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the  
5 state, who are entitled under the statutes of intestate succession to the property of a decedent.

6 (23) "Incapacitated person" has the meaning provided in 72-5-101.

7 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by the  
8 clerk of court for probate of a will or appointment of a personal representative.

9 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any  
10 others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected  
11 person. The term also includes persons having priority for appointment as personal representative and other  
12 fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time  
13 to time and must be determined according to the particular purposes of and matter involved in any proceeding.

14 (26) "Issue" of a person means a descendant.

15 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances  
16 that entitle one or more to the whole of the property on the death of the other or others but excludes forms of  
17 co-ownership registration in which the underlying ownership of each party is in proportion to that party's  
18 contribution.

19 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

20 (29) "Letters" includes letters testamentary, ~~letters of guardianship~~, letters of administration, and letters  
21 of ~~conservatorship~~ office as defined in [section 2].

22 (30) "Minor" means a person who is under 18 years of age.

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

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

27 (33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture,  
28 association, government or governmental subdivision or agency, or any other legal or commercial entity.

29 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without  
30 a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in

1 question and excludes any person who is only a stepparent, foster parent, or grandparent.

2 (35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or  
3 subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

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

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

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

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

10 (40) "Property" includes both real and personal property or any interest in that property and means  
11 anything that may be the subject of ownership.

12 (41) "Protected person" has the meaning provided in 72-5-101.

13 (42) "Protective proceeding" has the meaning provided in 72-5-101.

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

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

22 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

23 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto  
24 Rico, or any territory or insular possession subject to the jurisdiction of the United States.

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

27 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under  
28 the decedent's will or chapters 1 through 5.

29 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

30 (50) "Survive" means that an individual has neither predeceased an event, including the death of another

1 individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its  
2 derivatives, such as "survives", "survived", "survivor", and "surviving".

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

4 (52) "Testator" includes an individual of either sex.

5 (53) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and  
6 however created. The term also includes a trust created or determined by judgment or decree under which the  
7 trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and  
8 excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and  
9 Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for  
10 certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation  
11 trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or  
12 employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

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

15 (55) "Ward" ~~means an individual described~~ has the meaning provided in 72-5-101.

16 (56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes  
17 or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class  
18 to succeed to property of the decedent passing by intestate succession."

19

20 **Section 120.** Section 72-3-917, MCA, is amended to read:

21 **"72-3-917. Distribution to person under disability.** (1) A personal representative may discharge the  
22 personal representative's obligation to distribute to any person under legal disability by distributing in a manner  
23 expressly provided in the will.

24 (2) Unless contrary to an express provision in the will, the personal representative may discharge the  
25 personal representative's obligation to distribute to a minor or person under other disability as authorized by  
26 ~~72-5-104~~ [section 88] or any other statute. If the personal representative knows that a conservator has been  
27 appointed or that a proceeding for appointment of a conservator is pending, the personal representative is  
28 authorized to distribute only to the conservator.

29 (3) (a) If the heir or devisee is under disability other than minority, the personal representative is  
30 authorized to distribute to:



1 (i) an attorney-in-fact who has authority under a power of attorney to receive property for that person;

2 or

3 (ii) the spouse, parent, or other close relative with whom the person under disability resides if the  
4 distribution is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the  
5 court authorizes a larger amount or greater value.

6 (b) Any person receiving money or property for the disabled person is obligated to apply the money or  
7 property to the support of the disabled person, but the receiving person may not accept any pay except by way  
8 of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled  
9 person. Excess sums must be preserved for future support of the disabled person. The personal representative  
10 is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

11

12 **Section 121.** Section 72-5-101, MCA, is amended to read:

13 **"72-5-101. Definitions.** Unless otherwise apparent from the context, in chapters 1 through 5 and chapter  
14 16, part 6, the following definitions apply:

15 (1) ~~(a) "Incapacitated person" means any person who is impaired by reason of mental illness, mental~~  
16 ~~deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority,~~  
17 ~~to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible~~  
18 ~~decisions concerning the person or which cause has so impaired the person's judgment that the person is~~  
19 ~~incapable of realizing and making a rational decision with respect to the person's need for treatment~~ an individual:

20 (i) who, for reasons other than minority, lacks the ability to meet essential requirements for physical  
21 health, safety, or self-care because the individual is unable to receive and evaluate information or make or  
22 communicate decisions, even with appropriate supportive services, technological assistance, or supported  
23 decisionmaking; and

24 (ii) whose identified needs cannot be met by a protective arrangement instead of guardianship or other  
25 less restrictive alternative.

26 (b) For the purposes of this subsection (1), "less restrictive alternative", "protective arrangement instead  
27 of guardianship", and "supported decisionmaking" have the meanings provided in [section 2].

28 (2) ~~"Protected person" means a minor or other person for whom a conservator has been appointed or~~  
29 ~~other protective order has been made~~ means an individual for whom a conservator has been appointed under  
30 [section 57] or for whom a protective arrangement instead of conservatorship has been ordered under [section

1 91].

2 (3) "Protective proceeding" means a proceeding under ~~the provisions of 72-5-409 to determine that a~~  
3 ~~person cannot effectively manage or apply the person's estate to necessary ends, either because the person~~  
4 ~~lacks the ability or is otherwise inconvenienced or because the person is a minor, and to secure administration~~  
5 ~~of the person's estate by a conservator or other appropriate relief [section 57 or 91].~~

6 (4) "Substituted judgment" means the judgment that an incapacitated person would make if restored to  
7 capacity based upon:

8 (a) the person's present preference or, if the person is incapable of indicating the person's preference,  
9 the person's prior expressed preference;

10 (b) the person's personal, moral, and religious convictions;

11 (c) the person's relationship with family members;

12 (d) the consequences if the action proposed is not taken;

13 (e) the consequences if the action proposed is taken; and

14 (f) other relevant factors.

15 (5) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for  
16 ~~whom a guardian has been appointed solely because of minority~~ has the same meaning as "individual subject  
17 to guardianship" as defined in [section 2]."

18

19 **Section 122.** Section 72-5-602, MCA, is amended to read:

20 **"72-5-602. Definitions.** In this part, the following definitions apply:

21 (1) "Adult" means an individual who has attained 18 years of age.

22 (2) "Conservator" means a person appointed by the court to administer the property of an adult, including  
23 a person appointed under 53-20-141, 53-21-141, or ~~Title 72, chapter 5, part 4~~ [sections 57 through 88].

24 (3) "Guardian" means a person appointed by the court to make decisions regarding the person of an  
25 adult, including a person appointed under ~~Title 72, chapter 5, part 3~~ [sections 38 through 56].

26 (4) "Guardianship order" means an order appointing a guardian.

27 (5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a  
28 guardian is sought or has been issued.

29 (6) "Incapacitated person" means an adult for whom a guardian has been appointed.

30 (7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the

1 court to participate in a guardianship or protective proceeding.

2 (8) "Person", except in the term incapacitated person or protected person, means an individual, a  
3 corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint  
4 venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other  
5 legal or commercial entity.

6 (9) "Protected person" means an adult for whom a protective order has been issued.

7 (10) "Protective order" means an order appointing a conservator or ~~other order related to management~~  
8 ~~of an adult's property~~ an order for a protective arrangement instead of conservatorship, as defined in [section  
9 2], for an adult.

10 (11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has  
11 been issued.

12 (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic  
13 or other medium and is retrievable in perceivable form.

14 (13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is  
15 sought.

16 (14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States  
17 Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction  
18 of the United States."

19

20 **Section 123.** Section 72-15-301, MCA, is amended to read:

21 **"72-15-301. Compensation of public administrator.** (1) The public administrator must receive and  
22 shall collect for the administrator's own use as full compensation for services under this chapter, including  
23 attorney fees, the amounts provided for in 72-3-631 and 72-3-633.

24 (2) When the public administrator is appointed conservator of the estate of a protected person pursuant  
25 to Title 72, chapter 5, part 4 [sections 57 through 88], ~~of this title~~, the court may order that a reasonable sum be  
26 deducted from payments due to the protected person or from the protected person's estate to be paid to the  
27 public administrator as full compensation for the public administrator's services, excluding court costs and  
28 attorney fees. The total sum deducted as compensation for the public administrator may not be less than \$100."

29

30 **Section 124.** Section 72-31-413, MCA, is amended to read:

1           **"72-31-413. Disclosure of digital assets to conservator of protected person.** (1) After an opportunity  
2 for a hearing under ~~72-5-408~~ [section 57], the court may grant a conservator access to the digital assets of a  
3 protected person.

4           (2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a  
5 conservator the catalogue of electronic communications sent or received by a protected person and any digital  
6 assets, other than the content of electronic communications, in which the protected person has a right or interest  
7 if the conservator gives the custodian:

8           (a) a written request for disclosure in physical or electronic form;

9           (b) a certified copy of the court order that gives the conservator authority over the digital assets of the  
10 protected person; and

11           (c) if requested by the custodian:

12           (i) a number, user name, address, or other unique subscriber or account identifier assigned by the  
13 custodian to identify the account of the protected person; or

14           (ii) evidence linking the account to the protected person.

15           (3) A conservator with general authority to manage the assets of a protected person may request a  
16 custodian of the digital assets of the protected person to suspend or terminate an account of the protected person  
17 for good cause. A request made under this section must be accompanied by a certified copy of the court order  
18 giving the conservator authority over the protected person's property."

19

20           **Section 125.** Section 72-38-103, MCA, is amended to read:

21           **"72-38-103. Definitions.** As used in this chapter, unless the context clearly requires otherwise, the  
22 following definitions apply:

23           (1) "Action", with respect to an act of a trustee, includes a failure to act.

24           (2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or  
25 maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986,  
26 as in effect on the effective date of this chapter, or as later amended.

27           (3) "Beneficiary" means a person who:

28           (a) has a present or future beneficial interest in a trust, vested or contingent; or

29           (b) in a capacity other than that of trustee, holds a power of appointment over trust property.

30           (4) "Charitable trust" means a trust or portion of a trust created for a charitable purpose described in

1 72-38-405(1).

2 (5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult  
3 individual.

4 (6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to  
5 protection of the environment.

6 (7) "Guardian" means a person appointed by the court, ~~by a parent, or by a spouse~~ to make decisions  
7 regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not  
8 include a guardian ad litem.

9 (8) "Interested person" means:

10 (a) the trustee;

11 (b) the qualified beneficiaries who are entitled to notice; and

12 (c) the attorney general if the petition is related to a charitable trust subject to the jurisdiction of the  
13 attorney general.

14 (9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

15 (10) "Jurisdiction", with respect to a geographic area, includes a state or country.

16 (11) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust  
17 income or principal, whether mandatory or discretionary, or who holds a presently exercisable power of  
18 appointment over trust property. The term includes a charitable organization only if it is expressly designated to  
19 receive distributions under the terms of the charitable trust.

20 (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability  
21 company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public  
22 corporation, or any other legal or commercial entity.

23 (13) "Power of withdrawal" means a presently exercisable general power of appointment other than a  
24 power:

25 (a) exercisable by a trustee and limited by an ascertainable standard; or

26 (b) exercisable by another person only upon consent of the trustee or a person holding an adverse  
27 interest.

28 (14)(a) "Principal place of administration" means the usual place where the day-to-day activity of the trust  
29 is carried on by the trustee or its representative who is primarily responsible for the administration of the trust  
30 unless otherwise designated by the terms of the trust as provided in 72-38-108.

1 (b) If the principal place of administration of the trust cannot be determined under subsection (14)(a),  
2 then it must be determined as follows:

3 (i) if the trust has a single trustee, the principal place of administration of the trust is the trustee's  
4 residence or usual place of business; or

5 (ii) if the trust has more than one trustee, the principal place of administration of the trust is the residence  
6 or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees,  
7 the principal place of administration of the trust is the residence or usual place of business of any of the  
8 cotrustees.

9 (15) "Property" means anything that may be the subject of ownership, whether real or personal, legal or  
10 equitable, or any interest therein.

11 (16) "Qualified beneficiary" means a beneficiary who on the date the beneficiary's qualification is  
12 determined:

13 (a) is a distributee or permissible distributee of trust income or principal;

14 (b) would be a distributee or permissible distributee of trust income or principal if the interests of the  
15 distributees described in subsection (16)(a) terminated on that date without causing the trust to terminate; or

16 (c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on  
17 that date.

18 (17) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee  
19 or a person holding an adverse interest.

20 (18) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more  
21 than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust  
22 property attributable to that person's contribution except to the extent another person has the power to revoke  
23 or withdraw that portion.

24 (19) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer  
25 of a beneficiary's interest.

26 (20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States  
27 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term  
28 includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

29 (21) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as  
30 expressed in the trust instrument or as may be established by other evidence that would be admissible in a

1 judicial proceeding.

2 (22) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust,  
3 including any amendments thereto.

4 (23) "Trustee" includes an original, additional, and successor trustee and a cotrustee."  
5

6 **NEW SECTION. Section 126. Repealer.** The following sections of the Montana Code Annotated are  
7 repealed:

- 8 72-5-102. Consolidation of proceedings.
- 9 72-5-104. Informal discharge of duty to pay or deliver property to minor.
- 10 72-5-201. Status of guardian of minor -- how acquired generally -- letters to indicate means of appointment.
- 11 72-5-202. Consent to jurisdiction by acceptance of appointment.
- 12 72-5-211. Testamentary appointment of guardian of minor -- when effective -- priorities -- notice of  
13 appointment.
- 14 72-5-212. Recognition of appointment of guardian by foreign will.
- 15 72-5-213. Objection by minor 14 years of age or older to testamentary appointment.
- 16 72-5-221. Venue for proceedings for court appointment of guardian of minor.
- 17 72-5-222. Court appointment of guardian of minor -- when allowed -- priority of testamentary appointment.
- 18 72-5-223. Guardian of minor by court appointment -- qualifications -- nominee of minor preferred.
- 19 72-5-224. Temporary guardian of minor.
- 20 72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by  
21 attorney.
- 22 72-5-231. Powers and duties of guardian of minor.
- 23 72-5-233. Termination of appointment -- how effected -- certain liabilities and obligations not affected.
- 24 72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney.
- 25 72-5-301. Consent to jurisdiction by acceptance of appointment.
- 26 72-5-302. Testamentary appointment of guardian for incapacitated person -- when effective -- priorities.
- 27 72-5-303. Recognition of appointment of guardian by foreign will.
- 28 72-5-304. Objection by alleged incapacitated person to testamentary appointment.
- 29 72-5-305. Definitions.
- 30 72-5-306. Purpose and basis for guardianship.

- 1 72-5-311. Venue for proceedings for court appointment of guardian.
- 2 72-5-312. Who may be guardian -- priorities.
- 3 72-5-313. Visitor in guardianship proceedings defined.
- 4 72-5-314. Notices in guardianship proceedings.
- 5 72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural
- 6 rights.
- 7 72-5-316. Findings -- order of appointment.
- 8 72-5-317. Temporary guardians.
- 9 72-5-318. Request for notice -- interested person.
- 10 72-5-319. Contents of petition for appointment of guardian.
- 11 72-5-320. Purposes for establishment of limited guardianship.
- 12 72-5-321. Powers and duties of guardian of incapacitated person.
- 13 72-5-322. Petition of guardian for treatment of ward.
- 14 72-5-324. Termination of appointment -- how effected -- certain liabilities and obligations not affected.
- 15 72-5-325. Petition for removal or resignation of guardian -- termination of incapacity -- appointment of
- 16 successor guardian.
- 17 72-5-401. Original petition for appointment or protective order -- who may petition.
- 18 72-5-402. Contents of petition.
- 19 72-5-403. Notice -- waiver.
- 20 72-5-404. Request for notice -- interested person.
- 21 72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice.
- 22 72-5-406. Consent to jurisdiction by acceptance of appointment as conservator.
- 23 72-5-407. Venue.
- 24 72-5-408. Procedure concerning hearing and order on original petition.
- 25 72-5-409. Cause for appointment of conservator or issuance of protective order.
- 26 72-5-410. Who may be appointed conservator -- priorities.
- 27 72-5-411. Bond -- court may require -- amount.
- 28 72-5-412. Terms and requirements of bond.
- 29 72-5-413. Petitions for orders subsequent to appointment -- interested persons.
- 30 72-5-414. Resignation or removal of conservator for cause -- successor conservator.



- 1 72-5-415. Public administrator as conservator when no other appropriate person.
- 2 72-5-421. Powers of court as to property and affairs of protected persons generally -- temporary  
3 conservatorship.
- 4 72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing  
5 conservator.
- 6 72-5-423. Fiduciary duty of conservator.
- 7 72-5-424. Inventory and records.
- 8 72-5-425. Title by appointment as conservator -- appointment not transfer for certain purposes.
- 9 72-5-426. Letters as evidence of transfer of assets -- recording.
- 10 72-5-427. Powers of conservator in administration.
- 11 72-5-428. Distributive powers and duties of conservator generally.
- 12 72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person.
- 13 72-5-430. Enlargement or limitation of powers of conservator by court.
- 14 72-5-431. Preservation of estate plan -- right to inspect will.
- 15 72-5-432. Compensation and expenses.
- 16 72-5-433. Claims against protected person -- presentment, allowance, and payment -- priorities.
- 17 72-5-434. Transaction involving conflict of interest -- voidable -- exceptions.
- 18 72-5-435. Persons dealing with conservator -- protection.
- 19 72-5-436. Claims arising during conservatorship -- individual liability of conservator.
- 20 72-5-437. Termination of conservatorship.
- 21 72-5-438. Accounts -- final and intermediate.
- 22 72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings.
- 23 72-5-444. Petition to authorize proposed action -- substituted judgment.
- 24 72-5-445. Notice of hearing.
- 25 72-5-446. Consent or lack of capacity of protected person -- adequate provision for protected person and  
26 dependents.
- 27 72-5-447. Circumstances to be considered in determining whether to authorize or require proposed action.
- 28 72-5-448. Order.
- 29 72-5-449. No duty to propose action.
- 30 72-5-450. Production of protected person's other relevant estate plan documents.

1

2           NEW SECTION. Section 127. Codification instruction. [Sections 1 through 105] are intended to be  
3 codified as an integral part of Title 72, chapter 5, and the provisions of Title 72, chapter 5, apply to [sections 1  
4 through 105].

5

6           NEW SECTION. Section 128. Applicability. [This act] applies to:

7           (1) a proceeding for appointment of a guardian or conservator or for a protective arrangement instead  
8 of guardianship or conservatorship commenced after [the effective date of this act]; and

9           (2) a guardianship, conservatorship, or protective arrangement instead of guardianship or  
10 conservatorship in existence on [the effective date of this act] unless the court finds application of a particular  
11 provision of [this act] would substantially interfere with the effective conduct of the proceeding or prejudice the  
12 rights of a party, in which case the particular provision of [this act] does not apply and the superseded law applies.

13

14

- END -