

SIDE-BY-SIDE

ARTICLE 5- Protection of Persons under disabilities and their property --Parts 4 and 6

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
Article 5.Part 4. Protection of Property for Disabled Persons and Minors	Article 5.Part 4.
<p>SECTION 62-5-403. Venue.</p> <p>Venue for proceedings under this part is:</p> <p>(1) In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or</p> <p>(2) If the person to be protected does not reside in this State, in any place where he has property.</p> <p>REPORTER’S COMMENTS</p> <p>Section 62-5-403 puts venue for proceedings in the county of residence of the person to be protected, or if he resides out of state, where his</p>	<p>SECTION 62-5-401.</p> <p>After service of the summons and petition and notice of hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:</p> <p>(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.</p> <p>(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.</p> <p><u>Subject to the provisions of Section 62-5-701 et seq., venue for proceedings under this part is:</u></p> <p><u>(1) in the county in this State where the primary respondent resides, whether or not a guardian has been appointed in another place; or</u></p> <p><u>(2) if the primary respondent does not reside in this State, in any</u></p>

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<p>property lies.</p> <p>SECTION 62-5-402. Protective proceedings; jurisdiction of affairs of protected persons.</p> <p>After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:</p> <p>(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;</p> <p>(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and</p> <p>(3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62-5-433.</p> <p>REPORTER’S COMMENTS This section vests in the probate court, upon filing of the petition, exclusive jurisdiction over determination of the need for a conservator and the management of the protected person’s estate. Concurrent jurisdiction with the circuit court is given to determine the validity of claims.</p> <p>SECTION 62-5-401. Protective proceedings. After service of the summons and petition and notice of hearing in</p>	<p><u>county in this State where the primary respondent has property or has the right to take legal action.</u></p> <p>REPORTER’S COMMENTS This section consolidates venue for protective proceedings under Part 4. While the venue provisions are generally consolidated in this section, the section makes it clear that venue is subject to the provisions of the South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act (Part 7).</p> <p>SECTION 62-5-402.</p> <p>After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:</p> <p>(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;</p> <p>(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and</p> <p>(3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62-5-433.</p>

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<p>accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:</p> <p>(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.</p> <p>(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.</p> <p>REPORTER'S COMMENTS This is the basic section of this part providing for protective proceedings for minors and disabled persons. "Protective proceedings" is a generic</p>	<p>(1) <u>Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor, if the court determines that: (i) a minor owns money or property that requires management or protection that cannot otherwise be provided, (ii) has or may have business affairs that may be jeopardized or prevented by his minority, or (iii) funds are needed for the health, education, maintenance, and support of the minor and a protective order is necessary or desirable in order to obtain or provide such funds.</u></p> <p>(2) <u>Upon the filing of a summons and petition for appointment of a conservator or other protective order based upon minority, the summons and the petition shall be served upon the minor, the minor's living parents whose identity and whereabouts are known or reasonably ascertainable, and the person or persons having custody of the minor. After the time has elapsed for the filing of a response to the petition as to all parties served, the court may schedule a hearing on the matters alleged in the petition or, if the court is satisfied that the interests of the minor have been or will be adequately protected, the court may issue an order without the necessity of a hearing. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint a guardian ad litem for the minor, with the duties and responsibilities set forth in Section 62-5-830.</u></p> <p>(3) <u>If a minor is receiving needs-based government benefits, including, but not limited to, Supplemental Security Income or Medicaid, the court may limit access to the funds for the minor's benefit to prohibit payment of those expenses that would be considered support by the Social Security Administration including, but not limited to, food and shelter expenses.</u></p> <p>(4) <u>If prior to termination of a conservatorship based upon minority only, an interested person files a summons and petition for appointment</u></p>

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<p>term used to describe proceedings to establish conservatorships and obtain protective orders. Persons who may be subjected to the proceedings described here include a broad category of persons who, for a variety of different reasons, may be unable to manage their own property.</p> <p>The comment to Section 62-5-304, supra, points up the different meanings of incapacity (warranting guardianship), and disability.</p> <p>SECTION 62-5-404. Original petition for appointment or protective order.</p>	<p><u>of a conservator or other protective order under Section 62-5-403, the minor’s conservatorship shall not be terminated until the petition is heard by the court.</u></p> <p>REPORTER’S COMMENTS</p> <p>This section sets out the basic procedure for the appointment of a conservator or entry of another protective order by reason of minority. This section is not applicable to actions involving minors who are also incapacitated; Section 62-5-403 is applicable to those cases. While the section requires service on the minor and others, after the time for response to the petition has expired, the section allows for the appointment of a conservator or other protective order without the necessity of a formal hearing. Subsection 3 of this section was added to enable the court to structure the assets of a minor so as not to interfere with any needs based government benefits to which the minor may be entitled to. Further, while a conservatorship solely by reason of minority would terminate when the protected person attains the age of majority, subsection 4 allows for the conservatorship to be continued past majority, if a petition for conservatorship or other protective order under Section 62-5-403 is pending when the minor attains majority.</p> <p>SECTION 62-5-403.</p> <p>Venue for proceedings under this part is:</p> <p>(1) In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place;</p> <p>or</p> <p>(2) If the person to be protected does not reside in this State, in any place where he has property.</p> <p><u>(A) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if:</u></p> <p><u>(1) the court determines, by a preponderance of the evidence, the person is incapacitated or is unable to manage his property or affairs effectively for reasons of confinement, detention by a foreign power, or</u></p>

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<p>(a) The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.</p> <p>(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.</p>	<p><u>disappearance; and</u></p> <p><u>(a) the person has an agent under a durable power of attorney and the actions necessary to prevent waste or dissipation of the person's property are not being adequately performed by the agent under the durable power of attorney or are beyond the authority of the agent under the durable power of attorney; or</u></p> <p><u>(b) the person has no agent under a durable power of attorney and the person has property which will be wasted or dissipated or funds are needed for the health, education, maintenance or support of the person or for those entitled to be supported by the person and protection is necessary or desirable in order to obtain or provide such funds; and</u></p> <p><u>(2) the court determines, by a preponderance of the evidence, a protective order is necessary or desirable to create a special needs trust for a person who is disabled in accordance with Social Security Administration guidelines.</u></p> <p><u>(B) An alleged incapacitated person or any person interested in the estate, affairs, or welfare of the primary respondent may petition the court for the appointment of a conservator or for other appropriate protective order. A protective proceeding is commenced by the filing and service of a summons and verified petition for appointment of a conservator or other protective order, for reasons other than minority, upon the primary respondent and those persons listed in subsection (C)(4) of this section.</u></p> <p><u>(C) The petition shall set forth, to the extent known or reasonably ascertainable, the following information:</u></p> <p><u>(1) the interests of the petitioner;</u></p> <p><u>(2) the name, age, and current address of the primary respondent;</u></p> <p><u>and</u></p> <p><u>(3) the physical location of the primary respondent during the six month period immediately preceding the filing of the summons and petition, and, if the primary respondent was not physically present in South Carolina for that period, sufficient information on which the court may make a determination that it has initial jurisdiction pursuant to Section 62-5-707;</u></p>

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<p>SECTION 62-5-405. Service of summons and petition; notice of hearing; waiver of notice by person to be protected.</p> <p>(a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition. The following</p>	<p>(4) <u>the names and addresses of the following persons:</u></p> <p>(a) <u>the primary respondent’s guardian, if any;</u></p> <p>(b) <u>the primary respondent’s spouse;</u></p> <p>(c) <u>the primary respondent’s adult children;</u></p> <p>(d) <u>if there is no spouse or adult child, the primary respondent’s parents;</u></p> <p>(e) <u>if there is no spouse, adult child or parents, the primary respondent’s nearest adult relative;</u></p> <p>(f) <u>any person known to have been appointed as agent for the primary respondent under a general durable power of attorney or a health care power of attorney;</u></p> <p>(g) <u>any person whose priority for appointment as conservator under Section 62-5-408 is equal to or greater than the priority for appointment of the person whose appointment the petition advocates;</u></p> <p>(h) <u>any person with whom the primary respondent resides outside of a health care facility, group home, homeless shelter, or prison; and</u></p> <p>(i) <u>if the conservatorship is for the purpose of receiving veterans’ benefits, the Secretary of the Department of Veterans’ Affairs;</u></p> <p>(5) <u>a general statement of the primary respondent’s assets with an estimate of its value, and the source and amount of any income, insurance, pension, or allowance to which the primary respondent is entitled;</u></p> <p>(6) <u>the reason why appointment of a conservator or other protective order is necessary, including a brief description of the nature and extent of the primary respondent’s alleged incapacity; and</u></p> <p>(7) <u>if the appointment of a conservator is requested, the name and address of the person whose appointment is sought, the basis of his priority for appointment, and any limitations or restrictions sought to be imposed on the conservator’s powers and duties.</u></p> <p>(D) <u>Upon the filing of the summons and petition with the court and proof of service of the summons and petition upon the primary respondent, the court must appoint a guardian ad litem for the primary</u></p>

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<p>persons also must be properly served: the spouse and the adult children of the person to be protected, or if none, his parents or nearest adult relatives if there are no parents, and other persons as the court may direct.</p> <p>(b) Notice of hearing on a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to the person to be protected, to any person who has filed a request for notice under Section 62-5-406, to interested persons, and to other persons as the court may direct. Notice must be given in accordance with Section 62-1-401. Waiver of notice of hearing by the person to be protected is not effective unless he attends the hearing or waiver of notice is given by his attorney.</p> <p>REPORTER’S COMMENTS</p> <p>This section sets up a tiered system for giving notice. The petition is served first on the spouse and, if none, the parents. Section 62-5-405(b) provides that notice of a petition must be given to a person who has filed a request for notice and to interested persons or those whom the court may choose.</p> <p>Section 62-5-405 specifically establishes a twenty-day period between service and a hearing.</p>	<p><u>respondent in accordance with Part 8, Article 5, Title 62, and the guardian ad litem shall have the duties and responsibilities set forth in Part 8, Article 5, Title 62. Unless otherwise ordered by the court, the appointment of a guardian ad litem under this section will not affect the rights of the primary respondent and will not raise a presumption of incapacity of the primary respondent.</u></p> <p><u>(E)(1) The primary respondent is entitled to retain counsel of his or her choosing. If the primary respondent is not represented by counsel, then:</u></p> <p><u>(i) the court may allow the primary respondent to proceed pro se or shall instruct the guardian ad litem to assist the primary respondent in obtaining counsel; or</u></p> <p><u>(ii) upon the request of the guardian ad litem, the primary respondent, any party, or upon the court’s own motion, the court may appoint counsel for the primary respondent.</u></p> <p><u>(2) This subsection shall not be construed to require an attorney to accept an uncompensated appointment. During the pendency of any protective proceeding, any attorney purporting to represent the primary respondent shall file a notice of appearance with the court. Attorney’s fees for counsel appointed under this section shall be subject to approval by the court.</u></p> <p><u>(F) Except in cases governed by Section 62-5-431, relating to veterans’ benefits, upon the filing of the summons and petition with the court in which the petitioner alleges the primary respondent is incapacitated and proof of service of the summons and petition upon the primary respondent, the court must appoint an examiner, who shall be a physician, to examine the primary respondent and report to the court the physical and mental condition of the primary respondent. Upon motion or written request of the guardian ad litem, the primary respondent, any interested party, or upon the court’s own motion, the court may appoint one or more additional examiners, who may be a physician or any other person the court determines qualified to evaluate the primary respondent’s alleged impairment. If the court appoints any additional examiners, the court shall set out in the order appointing the</u></p>

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<p>SECTION 62-5-407. Procedure concerning hearing and order on original petition.</p> <p>(a) Upon the filing of a summons and petition for appointment of a conservator or other protective order because of minority, and after service of the summons and the petition, the court may set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. If the minor already has an attorney, that attorney shall act as his guardian ad litem.</p> <p>(b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with any institution in which the person is a patient or is detained.</p> <p>(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.</p>	<p><u>examiner why an additional examiner is necessary and why the appointed examiner is appropriate to serve in that capacity. Each examiner shall complete a verified report evaluating the condition of the primary respondent and file an original report with the court or deliver the original report to the guardian ad litem, who, without undue delay must file the report with the court by the deadline set by the court, but not less than forty-eight hours prior to any hearing in which the report will be introduced as evidence. For good cause, the court may allow admission of an examiner's report filed less than forty-eight hours prior to the hearing. All parties to the proceeding are entitled to a copy of each examiner's report. A examiner's report shall evaluate the condition of the primary respondent and shall contain, to the best information and belief of the examiner: (i) a description of the nature, type, and extent of the primary respondent's incapacity, including the primary respondent's specific functional impairments, (ii) a diagnosis and assessment of the primary respondent's mental and physical condition, including a statement as to whether the primary respondent is on any medications that may affect his actions or demeanor, (iii) where appropriate and consistent with the scope of the examiner's license, an evaluation of the primary respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement, (iv) the date or dates of the examinations, evaluations, and assessments upon which the report is based, (v) the identity of those persons with whom the examiner met or consulted regarding the primary respondent's mental or physical condition, and (vi) the signature of the examiner and the nature of the professional license held by the examiner. Unless otherwise directed by the court, in preparing a report for the court, the examiner may rely upon an examination of the primary respondent conducted by the examiner subsequent to his appointment or within the ninety-day period immediately preceding the filing of the petition. In the absence of bad faith or malicious intent, an examiner appointed by the court and performing an examination and submitting a report under this section shall be immune from civil liability for any breach of patient confidentiality made in furtherance of</u></p>

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<p>SECTION 62-5-406. Protective proceedings; request for notice; interested person.</p> <p>Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the request to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.</p> <p>REPORTER’S COMMENTS This section provides for notification of any interested person prior to</p>	<p><u>his duties under this section. A report prepared pursuant to this section shall be admissible as evidence of the facts stated in the report and the results of the examination or evaluation referred to in the report.</u></p> <p><u>(G) As soon as the interests of justice may allow, but after the time for response to the petition has elapsed as to all parties served, the court shall hold a hearing on the merits of the petition. The primary respondent, all parties, and any person who has filed a demand for notice pursuant to subsection (H), must be given notice of the hearing as provided in Section 62-1-401. The primary respondent shall attend the hearing unless excused by the court for good cause. In determining good cause, the court may consider affidavits submitted by the guardian ad litem or any interested persons. Nothing in this section prohibits all parties not in default from waiving a hearing on any petition, and the court for good cause may entertain a consent order on any petition. A primary respondent represented by counsel may consent through counsel.</u></p> <p><u>(H) Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a demand for notice. The court shall mail a copy of the demand to the conservator, if one has been appointed, or to the petitioner, if no conservator has been appointed. A demand for notice is not effective unless it contains a statement indicating the nature of the interest of the person filing the demand, his address or that of his attorney, and is effective only as to matters occurring after the filing of the demand.</u></p> <p><u>(I) After a hearing, or with the consent of all parties, upon finding that a basis for the appointment of a conservator or other protective order has been established as set forth in this section, the court shall make an appointment or other protective order.</u></p> <p><u>(J) Any person interested in the estate, affairs or welfare of a person who is unable to manage his property or affairs effectively for reasons</u></p>

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<p>filing of an order.</p>	<p><u>of confinement, detention by a foreign power, or disappearance may petition the court for appointment of a conservator or for other protective order for such person under this section; provided, however, the appointment of an examiner shall not be required for a person who is confined, detained or missing.</u></p> <p>REPORTER’S COMMENTS</p> <p>Section 62-5-403 was significantly revised by the 2012 amendment. The revised section adds the requirement of a summons and clarifies that a petition must be verified.</p> <p>This section sets out the basic procedure for the appointment of a conservator or entry of another protective order for reasons other than minority.</p> <p>The phrase ‘any person interested in the estate, affairs, or welfare of the primary respondent’ is intended to be broader than then term ‘interested person’ defined in 62-1-201. For example, it could include a friend, neighbor, or person residing with the primary respondent.</p> <p>Subsection (A) sets out the conditions under which the appointment of a conservator or other protective order is appropriate. In order to preserve any advance planning by the primary respondent, the revised subsection emphasizes the importance of looking first to agents under a durable power of attorney, before appointing a conservator or issuing a protective order. Nothing in the section precludes a party from questioning the validity of a power of attorney or seeking the removal of an agent under a power of attorney for breach or dereliction of duty. Further the section acknowledges that necessary actions may be beyond the authority given to an agent under a durable power of attorney. A major addition to the reasons for the appointment of a conservator or protective order is the need to create a special needs trust for a disabled person. For this subsection to apply the disabled person need not be incapacitated, but must be disabled under social security guidelines. It is not necessary the individual be actually receiving social security disability or SSI benefits.</p> <p>Subsection (B) provides who may commence a proceeding for the</p>

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	<p>appointment of a conservator or other protective order, how to commence the proceeding, and who must be served in connection with the proceeding. This section makes it clear the petition used to commence the proceeding must be verified by the petitioner.</p> <p>Subsection (C) provides detailed requirements for the content of a petition for appointment of conservator or other protective order. While the subsection requires the petitioner to provide only information known to the petitioner, it imposes on the petitioner a duty to engage in a reasonable effort to ascertain the required information. Specifying the required contents of the petition is in accordance with the recommendations of both the Wingspread conference on guardianship reform and the Commission on National Probate Court Standards. See Guardianship: An Agenda For Reform 9 (A.B.A. 1989); National Probate Court Standards, Standard 3.3.1, ‘Petition’ (1993).</p> <p>Subsection (D) provides for the appointment of a guardian ad litem, upon the filing and service of the verified petition for appointment of conservator or other protective order. While appointment of a guardian ad litem occurs without a preliminary assessment of capacity by the court, the subsection makes it clear the mere appointment of the guardian ad litem does not impact the rights of the person allegedly in need of a conservator or protective order and the appointment is not evidence of incapacity.</p> <p>With this revision, the roles of legal counsel and guardian ad litem have been separated. While a guardian ad litem is required to be appointed in every case, unlike prior law, it is not necessary for the guardian ad litem to be an attorney. Further, if the guardian ad litem is an attorney, that person may not also serve as counsel for the primary respondent in the proceeding. This revision eliminates the conflict which existed under prior law between the role of legal counsel as advocate for the primary respondent and the role of guardian ad litem, who has duties to both the primary respondent and the court.</p> <p>Subsection (E) provides that the primary respondent is not required to be represented by counsel, but is entitled to be represented by counsel of his own choosing. This subsection sets forth the options of</p>

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	<p>the court when dealing with a primary respondent who is not represented by counsel. This section does not mandate the appointment of counsel, nor is the primary respondent required to be represented by counsel. If the court determines an unrepresented primary respondent should not proceed without counsel, the subsection authorizes the court to appoint counsel for the primary respondent. The subsection also suggests to the court the option of directing the guardian ad litem to assist the person in obtaining counsel. This would be particularly appropriate where the court felt the need for counsel and the person had adequate resources with which to pay counsel. The enhanced duties of the guardian ad litem established by Title 62, Article 5, Part 8, in conjunction with the enhanced qualification for persons acting as guardian ad litem should provide adequate protection of the interests of the person who is the subject of a protective proceeding in most cases.</p> <p>Subsection (F) provides for the appointment of an examiner in connection with a proceeding for the appointment of a conservator or other protective order, establishes the necessary qualification of the person who will serve as an examiner, sets forth the type of report the examiner is to produce, and the time within which the report is to be produced. A designated examiner who is a physician must be appointed. Additional designated examiners may be appointed by the court. The additional examiners may be physicians or any other person the court has determined is qualified to evaluate the primary respondent's alleged impairment. The subsection also clarifies prior law by establishing the examiner may make his report from information obtained in an examination conducted prior to the examiner's appointment. If the examiner's report references an examination conducted prior to appointment, it must have been conducted within the 90 days immediately preceding the examiner's appointment; otherwise the examination must occur subsequent to the appointment.</p> <p>Subsection (G) establishes the requirement of a hearing in regard to the petition, provides who must be given notice of the hearing, and sets forth the timing of notice. Note that the subsection mandates attendance at the hearing by the primary respondent absent a showing</p>

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	<p>of good cause.</p> <p>Subsection (H) provides a procedure for interested persons to obtain notice prior to orders being issued in the proceeding.</p> <p>Subsection (I) establishes the requirement that the court issue an order in response to a petition and clarifies that such an order may arise by consent of all parties. If the petition contains an allegation of incapacity on behalf of the primary respondent, he must be represented by counsel in order to consent.</p> <p>Subsection (J) clarifies that the appointment of an examiner is not necessary, in the absence of an allegation of incapacity. An examiner would be unnecessary in cases of detention or missing persons.</p> <p>Section 62-5-401 puts venue for proceedings in the county of residence of the person to be protected, or if he resides out of state, where his property lies.</p> <p>SECTION 62-5-404.</p> <p>(a) The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.</p> <p>(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.</p>

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<p>SECTION 62-5-408. Permissible court orders.</p> <p>The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:</p> <p>(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing upon such notice by the court as is reasonable under the circumstances, and if the petition requests temporary relief, the court has the power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents; however, notice of such actions of the court shall be given to interested parties as soon thereafter as practicable.</p> <p>(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.</p> <p>(3)(a) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and of his estate and fulfillment of his legal obligations of support of dependents, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, the power to:</p> <p>(i) make gifts as the court, in its discretion, believes would be made by the person if he were competent;</p> <p>(ii) convey or release the person's contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy;</p> <p>(iii) exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;</p>	<p><u>The court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:</u></p> <p><u>(A) During the pendency of a proceeding for the appointment of a conservator or other protective order, any party or other person interested in the estate, affairs or welfare of the primary respondent may file with the court a motion for temporary relief in regard to the property or financial affairs of the primary respondent.</u></p> <p><u>(B) Unless made in open court, the motion shall be in writing and shall describe the nature of the temporary relief sought and state the reasons the temporary relief is in the best interest of the primary respondent.</u></p> <p><u>(C) Upon receipt of the motion, the court may issue an order ex parte or schedule a hearing with such notice as the court may prescribe, all as the interests of justice or the needs of the primary respondent require.</u></p> <p><u>(D) Notwithstanding any other provision of this section, no order for temporary relief will issue other than following a hearing with notice to all parties as provided in Section 62-1-401 unless it appears from specific facts, shown by affidavit or evident from the petition, that the requested relief is necessary to provide for the health and welfare of the primary respondent or those dependent upon the primary respondent for support or to prevent the property of the primary respondent from being wasted and there is insufficient time to hold a noticed hearing.</u></p> <p><u>(E) Notice of any temporary relief granted shall be given to all parties as soon thereafter as practicable. If relief was granted without a noticed hearing, on two days' notice to the party who obtained the order for temporary relief, or on shorter notice to that party as the court may prescribe, the primary respondent, or any party opposed to the order may appear and move its dissolution or modification, and in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.</u></p> <p><u>(F) Except as otherwise provided by the court, any order granting temporary relief under this section shall terminate upon the court's final</u></p>

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<p>(iv) enter into contracts;</p> <p>(v) create or amend revocable trusts or create irrevocable trusts of property of the estate which may extend beyond the person’s disability or life;</p> <p>(vi) fund trusts;</p> <p>(vii) exercise options of the disabled person to purchase securities or other property;</p> <p>(viii) exercise the person’s right to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;</p> <p>(ix) exercise the person’s right to an elective share in the estate of the person’s deceased spouse;</p> <p>(x) renounce any interest by testate or intestate succession or by inter vivos transfer; and</p> <p>(xi) ratify any such actions taken on the person’s behalf.</p> <p>(b) In order to exercise, or direct the exercise of the court’s authority in any powers set forth in item (a), the court must entertain a petition in which the specific relief sought is set forth, the incapacitated person, his known heirs, devisees, donees, and beneficiaries are made parties to the action, and which contains a statement that the person either is incapable of consenting or has consented to the proposed exercise of power.</p> <p>(c) In exercising the powers set forth in item (b), the court also must inquire into and consider any known lifetime gifts or the estate plan of the person, the terms of any revocable trust of which he is grantor, and any contract, transfer, or joint ownership arrangements with provisions for payment or transfer of benefits or interests at his death to another which he may have originated. In exercising the court’s authority set forth in item (b), the court must set forth in the record specific findings upon which it has based its ruling.</p> <p>(4) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person, except to the extent the order affects his estate or affairs.</p>	<p><u>ruling on the merits of the pending petition for conservatorship or protective order.</u></p> <p><u>(G)(1) Upon finding that a basis for an appointment or other protective order exists with respect to a minor solely for reason of minority, the court has all of the powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.</u></p> <p><u>(2) Upon finding that a basis for an appointment or other protective order exists for reasons other than minority, the court has all of the powers over the person’s real and personal property and financial affairs which such person could exercise if not under disability, except the power to make a will.</u></p> <p>REPORTER’S COMMENTS</p> <p>This Section was revised by the 2012 amendment and provides a procedure for obtaining temporary relief pending a determination in a protective proceeding and sets forth a general description of the power of the court after it determines the appointment of a conservator or issuance of a protective order is appropriate.</p> <p>Subsection (A) establishes the procedure for seeking an order of temporary relief in regard to the affairs of the primary respondent in a protective proceeding. The subsection provides that any person interested in the affairs of the primary respondent may move the court for an order of temporary relief during the pendency of a protective proceeding. The phrase ‘other person interested in the estate, affairs, or welfare of the primary respondent’ is intended to be broader than then term ‘interested person’ defined in 62-1-201. For example, it could include a friend, neighbor, or person residing with the primary respondent. Note that no such order may issue prior to the filing and service of a summons and petition. While the subsection authorizes the court to issue ex parte orders in response to the motion for temporary relief, the subsection emphasizes that absent exigent circumstances the court should schedule a hearing on the motion and provide notice to all parties to the proceeding. The subsection also provides for a procedure</p>

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<p>contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.</p> <p>(b) When it has been established in a proper proceeding that a basis exists as described in Section 62-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.</p> <p>(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.</p>	<p><u>mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.</u></p> <p><u>(2) When it has been established in a proper proceeding that a basis exists as described in Section 62-5-402 or Section 62-5-403 for affecting the property and affairs of the primary respondent, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the primary respondent's financial affairs or involving the primary respondent's estate if the court determines that the transaction is in the best interests of the primary respondent.</u></p> <p><u>(B) Before approving a protective arrangement or other transaction under this section, the court shall consider whether, in view of the primary respondent's disability, the primary respondent needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special conservator shall have the authority conferred by the court's order, shall file any and all reports as required by the court and shall serve until discharged by order of the court.</u></p> <p><u>(C)(1) When it is established in a proper proceeding that a basis exists as described in Section 62-5-403 for affecting the property and affairs of the primary respondent, the court may exercise or authorize a conservator or a special conservator to exercise any of the powers set forth in subsection (D).</u></p> <p><u>(2) If the power sought to be exercised in subsection (D) is requested concurrently with the petition under Section 62-5-403, in addition to those persons required to be served under section 62-5-403, all of the primary respondent's known heirs and devisees are also required to be served with the summons and petition.</u></p> <p><u>(3) If the power sought to be exercised in subsection (D) is requested subsequent to the appointment of a conservator, then the primary respondent and all of the primary respondent's known heirs</u></p>

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	<p><u>and devisees are required to be served with the summons and petition requesting the requested relief.</u></p> <p><u>(D) The following powers may be authorized by the court after hearing or with the consent of all necessary parties:</u></p> <p><u>(1) to make gifts as the court, in its discretion, believes would be made by the primary respondent if the primary respondent were competent;</u></p> <p><u>(2) to convey or release the primary respondent’s contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy;</u></p> <p><u>(3) to create or amend revocable trusts or create irrevocable trusts of property of the primary respondent’s estate that may extend beyond the primary respondent’s disability or life, including the creation or funding of a special needs trust or a pooled fund trust for a minor who has been determined to be disabled;</u></p> <p><u>(4) to fund trusts;</u></p> <p><u>(5) to exercise the primary respondent’s right to elect options and change beneficiaries under insurance and annuity policies and to surrender policies for their cash value;</u></p> <p><u>(6) to exercise the primary respondent’s right to an elective share in the estate of the primary respondent’s deceased spouse;</u></p> <p><u>(7) to disclaim or renounce any interest by testate or intestate succession or by inter vivos transfer; and</u></p> <p><u>(8) to ratify any such actions taken on the behalf of the primary respondent.</u></p> <p><u>(E) In exercising or approving a conservator’s or special conservator’s exercise of the powers set forth in subsection (D) above, the court shall, to the extent ascertainable, give primary weight to what the primary respondent would do under the circumstances if the primary respondent capable of acting independently. The court may also consider:</u></p> <p><u>(1) the financial needs and legal obligations of the primary respondent, including the needs of individuals to whom the primary respondent owes an obligation of support;</u></p>

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	<p><u>(2) possible reduction of taxes, including, but not limited to, income, estate, and inheritance taxes;</u></p> <p><u>(3) the primary respondent’s eligibility or potential eligibility for governmental assistance;</u></p> <p><u>(4) the primary respondent’s previous pattern of giving or level of support;</u></p> <p><u>(5) the primary respondent’s existing estate plan; and</u></p> <p><u>(6) the primary respondent’s life expectancy and the probability that the conservatorship will terminate before the primary respondent’s death.</u></p> <p><u>(F) In exercising or approving a conservator’s or special conservator’s exercise of the powers set forth in subsection (D), the court shall set forth in the court’s record specific findings upon which the court bases its ruling. For purposes of issuing a consent order under subsection (D), a guardian ad litem may consent on behalf of the primary respondent.</u></p> <p>REPORTER’S COMMENTS</p> <p>As revised by the 2012 amendment this encompasses former Section 62-5-409 and a portion of Section 62-5-408. Consistent with the philosophy of this article that a conservator be appointed only as a last resort, this section authorizes the court, in lieu of appointing a conservator, to order a variety of less intrusive ‘protective arrangements.’ A protective arrangement typically involves a single transaction such as a sale of land or the entry of a contract for care. The procedure for obtaining a protective arrangement is similar to that required for the appointment of a conservator. A summons and petition must be filed, and notice must be given to the appropriate parties.</p> <p>The code section provides that the court may authorize a protective arrangement or single transaction without the appointment of a conservator; however, the section also introduces the concept of a special conservator. The role of the special conservator is to carry out only those tasks that are specifically ordered by the court.</p> <p>Subsection (C) lists powers the court can exercise over the assets of a</p>

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	<p>protected person, but which require notice to parties who may not normally be served with the summons and petition for a conservator or other protective order. The reason is these actions may affect what a non-party would receive by way of inheritance from the protected person. The subsection deals with both the situation of a request for the action in an original petition, and a request for the action in a proceeding after a conservator has been appointed.</p> <p>Subsection (D) takes the opportunity to suggest the use of consent orders, to mitigate disputes that may arise.</p> <p>Subsection (E) lists the factors the court should consider in determining whether it should approve or facilitate a protective arrangement described in subsection (D). Subsection (E) makes it clear the decision to approve or disapprove a request for a protective proceeding described in subsection (D) should be primarily based on the decision that the protected person would have made, if of full capacity. In that regard the court should take into consideration the protected person's personal values and expressed desires, past and present, when making decisions. Carrying out the protected person's intent or probable intent is a major theme of this part. In this regard, this section probably confirms what the law is already. Even in the absence of a statute, the conservator should consider the protected person's probable wishes, particularly with respect to gifts and other estate planning related transactions.</p> <p>Subsection (F) provides guidance to the court on what should be included in an order approving a protective arrangement described in subsection (D).</p> <p>The authority confirmed by this section may be used to engage in tax planning on behalf of the protected person. For example, by making annual exclusion gifts, the federal estate tax liability at the protected person's death may be substantially reduced. However, this section can also be used for non-tax transactions. Transfers may be made to qualify the protected person for governmental programs, or the court may continue the protected person's prior pattern of giving to charities and others.</p>

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	<p>SECTION 62-5-406.</p> <p>Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the request to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings. Unless an order of the court specifies otherwise, a finding of incapacity and appointment of a conservator or other protective order is not a determination that the protected person lacks testamentary capacity or the capacity to create, amend or revoke a revocable trust.</p> <p>REPORTER'S COMMENTS</p> <p>This section makes it clear that a finding of incapacity for purposes of appointment of a conservator or other protective order is not a finding as to testamentary capacity.</p> <p>SECTION 62-5-407.</p> <p>(a) Upon the filing of a summons and petition for appointment of a conservator or other protective order because of minority, and after service of the summons and the petition, the court may set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. If</p>

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	<p>the minor already has an attorney, that attorney shall act as his guardian ad litem.</p> <p>(b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with any institution in which the person is a patient or is detained.</p> <p>(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order. (A)</p> <p><u>Unless the court's order specifies otherwise, the appointment of a conservator shall remove from the protected person the following rights and privileges, which to the extent authorized in Section 62-5-422, and pending further order of the court, shall thereafter reside in the conservator acting on behalf of the protected person:</u></p> <ol style="list-style-type: none"> <u>(1) the power to buy, sell, or transfer real or personal property or transact business of any type including, but not limited to, those powers conferred upon the conservator under Section 62-5-422;</u> <u>(2) the power to make, modify, or terminate contracts; and</u> <u>(3) the right to bring or defend any action at law or equity.</u> <p><u>Nothing in this section shall prevent the protected person from notifying the court that the protected person is being unjustly denied a right or privilege granted by this part or requesting removal of the conservator or termination of the conservatorship under Section 62-5-428.</u></p> <p>(B) <u>Unless the court's order specifies otherwise, the appointment of</u></p>

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<p>SECTION 62-5-410. Who may be appointed conservator; priorities.</p>	<p><u>a conservator suspends the authority of an agent who was previously appointed by the protected person to act as an agent under financial provisions of a durable power of attorney. The authority of an agent to make health care decisions or authority granted by other advance directives regarding health care is unaffected by the appointment of a conservator. The court may, with appropriate findings, permanently terminate the authority of an agent under a durable or nondurable power of attorney.</u></p> <p>REPORTER’S COMMENTS</p> <p>Under the 2012 amendment, this section sets forth the rights and privileges lost by a protected person upon the appointment of a conservator. The court can override this section by court order.</p> <p>Subsection (B) provides that, upon the appointment of a conservator, the authority of an agent under a durable power of attorney executed by the protected person is suspended. Note the agent’s authority is only suspended and not revoked. If the court determines at some point in the future a conservator is no longer necessary, the authority of the agent under the power of attorney is revived.</p> <p>Note that the appointment of a conservator has no impact on the authority of an agent under a health care power of attorney. However, the appointment of a guardian under Section 62-5-303 would affect the authority of such an agent.</p> <p>SECTION 62-5-408.</p> <p>The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:</p> <p>(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing upon such notice by the court as is reasonable under the circumstances, and if the petition requests temporary relief, the court has the power to preserve and apply the property of the person to be protected as may be required</p>

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	<p>for his benefit or the benefit of his dependents; however, notice of such actions of the court shall be given to interested parties as soon thereafter as practicable.</p> <p>(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.</p> <p>(3)(a) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and of his estate and fulfillment of his legal obligations of support of dependents, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, the power to:</p> <ul style="list-style-type: none"> (i) make gifts as the court, in its discretion, believes would be made by the person if he were competent; (ii) convey or release the person's contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy; (iii) exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment; (iv) enter into contracts; (v) create or amend revocable trusts or create irrevocable trusts of property of the estate which may extend beyond the person's disability or life; (vi) fund trusts; (vii) exercise options of the disabled person to purchase securities or other property; (viii) exercise the person's right to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value; (ix) exercise the person's right to an elective share in the estate

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<p>(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:</p> <p>(1) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;</p> <p>(2) an individual or corporation nominated by the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;</p> <p>(3) an attorney in fact appointed by such protected person pursuant to Section 62-5-501;</p>	<p>of the person's deceased spouse;</p> <p>(x) renounce any interest by testate or intestate succession or by inter vivos transfer; and</p> <p>(xi) ratify any such actions taken on the person's behalf.</p> <p>(b) In order to exercise, or direct the exercise of the court's authority in any powers set forth in item (a), the court must entertain a petition in which the specific relief sought is set forth, the incapacitated person, his known heirs, devisees, donees, and beneficiaries are made parties to the action, and which contains a statement that the person either is incapable of consenting or has consented to the proposed exercise of power.</p> <p>(c) In exercising the powers set forth in item (b), the court also must inquire into and consider any known lifetime gifts or the estate plan of the person, the terms of any revocable trust of which he is grantor, and any contract, transfer, or joint ownership arrangements with provisions for payment or transfer of benefits or interests at his death to another which he may have originated. In exercising the court's authority set forth in item (b), the court must set forth in the record specific findings upon which it has based its ruling.</p> <p>(4) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person, except to the extent the order affects his estate or affairs.</p> <p><u>(1) The court may appoint an individual, or a corporation with the power to serve as trustee, as conservator of the estate of the primary respondent. The court in appointing a conservator shall consider persons, who are otherwise qualified, in the following order of priority:</u></p> <p><u>(a) a person previously appointed as conservator, guardian of property, or other like fiduciary for the primary respondent by another court of competent jurisdiction;</u></p> <p><u>(b) an individual or corporation nominated by the primary respondent if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make a reasoned choice;</u></p> <p><u>(c) an attorney in fact appointed by the primary respondent</u></p>

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<p>(4) the spouse of the protected person; (5) an adult child of the protected person; (6) a parent of the protected person, or a person nominated by the will of a deceased parent; (7) any other relative of the protected person; (8) a person nominated by the person who is caring for him or paying benefits to him.</p> <p>(b) A person in priorities (1), (4), (5), (6), or (7) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.</p> <p>(c) A probate judge or an employee of the probate court shall not serve as a conservator of an estate of a protected person; however, a probate judge or an employee of the probate court may serve as a conservator of the estate of a family member if such service does not interfere with the proper performance of the probate judge’s or the employee’s official duties. For purposes of this subsection, “family member” means a spouse, parent, child, brother, sister, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.</p> <p>REPORTER’S COMMENTS This section sets forth in detail the tiered system prioritizing those who may be appointed conservator.</p>	<p>pursuant to Section 62-5-501;</p> <p><u>(d) the spouse of the primary respondent.</u> <u>(e) an adult child of the primary respondent;</u> <u>(f) a parent of the primary respondent;</u> <u>(g) the person nearest in kinship to the primary respondent who is willing to accept the appointment;</u> <u>(h) a person with whom the primary respondent resides outside of a health care facility, group home, homeless shelter, or prison; and</u> <u>(i) a person nominated by a health care facility caring for the primary respondent.</u></p> <p><u>A person whose priority is based upon the status under items (a), (c), (d), (e), (f), or (g), may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as conservator for the primary respondent and in the best interest of the primary respondent. The court, acting in the best interest of the primary respondent, may decline to appoint a person having higher priority and appoint a person having lesser priority or no priority.</u></p> <p><u>(2) A probate judge or an employee of the probate court shall not serve as a conservator of an estate of a protected person. However, a probate judge or an employee of the probate court may serve as a conservator of the estate of a family member if the service does not interfere with the proper performance of the probate judge’s or the employee’s official duties. For purposes of this subsection, ‘family member’ means a spouse, parent, child, brother, sister, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.</u></p> <p>REPORTER’S COMMENTS The 2012 amendments expand former Section 62-5-410. The section provides a detailed tiered system for determining who should be given priority for appointment as conservator for a protected person. A change from prior law is the addition in the list of priorities of a person with whom the primary respondent resides, regardless of kinship.</p>

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<p>SECTION 62-5-411. Bond.</p> <p>The court, unless for good cause stated, shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and will approve all sureties. If bond is required, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the protected person and of the income expected from the personal estate</p>	<p>While the court must consider persons in the order listed, nothing prevents a court from deviating from the order of priority in the best interest of the primary respondent.</p> <p>SECTION 62-5-409.</p> <p>(a) If it is established in a proper proceeding that a basis exists as described in Section 62-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.</p> <p>(b) When it has been established in a proper proceeding that a basis exists as described in Section 62-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.</p> <p>(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.</p> <p><u>Except upon a finding of good cause, the court must require a</u></p>

<p>ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Parts 4 and 6</p>
<p>during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 62-6-101, in a manner that prevents their unauthorized disposition. Upon application of the conservator or another interested person, or upon the court's own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties. A denial of an application by the court is not an adjudication and does not preclude a formal proceeding.</p>	<p><u>conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator according to law and must approve all sureties. When bond is required, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the protected person and of the income expected from the personal estate during the next calendar year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. Good cause for waiver of the bond includes, but is not limited to, the establishment of a properly executed restricted account agreement with a domestic financial institution, as defined in Section 62-6-101, in which the funds are deposited and held in a manner that prevents their unauthorized disposition or other similar restrictive arrangements. The court may authorize an unrestricted or unbonded account to be used by the conservator for expenses on behalf of the protected person, and all activity in the account shall be reported by the conservator as required by the court. Upon application of the conservator or another interested person, or upon the court's own motion, the court may: (a) order the creation, change, or termination of an account, (b) increase or reduce the amount of the bond, (c) release sureties, (d) dispense with security or securities, or (e) permit the substitution of another bond with the same or different sureties.</u></p> <p>REPORTER'S COMMENTS As revised by the 2012 amendment this was formerly Section 62-5-411. This section continues its bias toward conservators being bonded. Changes to prior law include guidance on the meaning of good cause for purposes of waiving the requirement of bond.</p> <p>SECTION 62-5-410.</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>SECTION 62-5-412. Terms and requirements of bonds.</p>	<p>(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:</p> <ul style="list-style-type: none"> (1) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides; (2) an individual or corporation nominated by the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice; (3) an attorney in fact appointed by such protected person pursuant to Section 62-5-501; (4) the spouse of the protected person; (5) an adult child of the protected person; (6) a parent of the protected person, or a person nominated by the will of a deceased parent; (7) any other relative of the protected person; (8) a person nominated by the person who is caring for him or paying benefits to him. <p>(b) A person in priorities (1), (4), (5), (6), or (7) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.</p> <p>(c) A probate judge or an employee of the probate court shall not serve as a conservator of an estate of a protected person; however, a probate judge or an employee of the probate court may serve as a conservator of the estate of a family member if such service does not interfere with the proper performance of the probate judge's or the employee's official duties. For purposes of this subsection, 'family member' means a spouse, parent, child, brother, sister, niece, nephew, mother in law, father in law, son in law, daughter in law, grandparent, or grandchild.</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>(a) The following requirements and provisions apply to any bond required under Section 62-5-411:</p> <p>(1) Sureties shall be jointly and severally liable with the conservator and with each other;</p> <p>(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;</p> <p>(3) After service of a summons and petition by a successor conservator or any interested person, or upon the court's own motion, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;</p> <p>(4) Subject to applicable statutes of limitation, the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.</p> <p>(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.</p> <p>REPORTER'S COMMENTS Section 62-5-412 amplifies 62-5-411.</p>	<p><u>The following requirements and provisions apply to any bond required under Section 62-5-409:</u></p> <p><u>(1) sureties shall be jointly and severally liable with the conservator and with each other;</u></p> <p><u>(2) by executing an approved bond of a conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;</u></p> <p><u>(3) after service of a summons and petition by a successor conservator or any interested person, or upon the court's own motion, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;</u></p> <p><u>(4) subject to applicable statutes of limitation, the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted;</u></p> <p><u>(5) no proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.</u></p> <p>REPORTER'S COMMENTS As moved by the 2012 amendment, this was formerly Section 62-5-412. There are no substantive changes from the prior law.</p> <p>SECTION 62-5-411.</p> <p>The court, unless for good cause stated, shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and will approve all sureties. If bond is required, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>SECTION 62-5-413. Acceptance of appointment; consent to jurisdiction.</p> <p>By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.</p> <p>REPORTER’S COMMENTS This section specifies the jurisdiction of the court over a conservator who accepts appointment and provides for notice to him.</p>	<p>protected person and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 62-6-101, in a manner that prevents their unauthorized disposition. Upon application of the conservator or another interested person, or upon the court’s own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties. A denial of an application by the court is not an adjudication and does not preclude a formal proceeding. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any informal or formal proceeding relating to the conservatorship estate. Notice of any proceeding shall be delivered to the conservator.</p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment, this was formerly Section 62-5-413. The section establishes that acceptance of the office of conservator constitutes consent to the jurisdiction of South Carolina courts. Notice of any proceeding against a person for whom a conservator has been appointed must be delivered to the conservator.</p> <p>SECTION 62-5-412.</p> <p>(a) The following requirements and provisions apply to any bond required under Section 62-5-411:</p> <p>(1) Sureties shall be jointly and severally liable with the</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>SECTION 62-5-414. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, as determined by the court.</p> <p>REPORTER'S COMMENTS Section 62-5-414 entitles those who have served the estate to reasonable compensation.</p>	<p>conservator and with each other;</p> <p>(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;</p> <p>(3) After service of a summons and petition by a successor conservator or any interested person, or upon the court's own motion, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;</p> <p>(4) Subject to applicable statutes of limitation, the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.</p> <p>(b) <u>No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation. Any guardian ad litem, attorney, examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the protected person's estate, as determined by the court. In addition, the court has discretion to award, from the protected person's estate, reasonable fees and expenses to attorneys involved in the proceeding resulting in a protective order.</u></p> <p>REPORTER'S COMMENTS As amended by the 2012 amendments, this was formerly Section 62-5-414. This section explains how appointees are to be compensated and allows attorneys to be compensated from the estate of the protected person. This change is in response to the decision in Dowaliby v. Chambless, 544 S.E.2d 646 (S.C.App. 2001) and is intended to provide a statutory basis for the court, in its discretion, to award attorney's fees, to be paid from the protected person's estate, to attorneys involved in the proceeding.</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>SECTION 62-5-415. Death, resignation, or removal of conservator.</p> <p>The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.</p> <p>REPORTER’S COMMENTS Since the legal title to the real property is transferred to the conservator, in order to prevent fraudulent conveyances and to inhibit erroneous conveyances letters of conservatorship should be recorded.</p> <p>SECTION 62-5-416. Requests for orders subsequent to appointment; service of petition and summons; denial of application.</p> <p>(a) Upon filing a petition and summons with the appointing court, a person interested in the welfare of a person for whom a conservator has been appointed may request an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief. The petition and summons must be served upon the conservator and other persons as the</p>	<p>SECTION 62-5-413.</p> <p>By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner. <u>The court may remove a conservator for good cause or accept the resignation of a conservator. After the death, resignation, or removal of a conservator, the court may, if necessary appoint a successor conservator who succeeds to the title and powers of his predecessor. The removal of a conservator or the discharge of a conservator based upon resignation and, if necessary, the appointment of a successor conservator, shall be in accordance with the procedure set forth in Section 62-5-428. Resignation of a conservator is not effective until approved by the court.</u></p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment, this was formerly Section 62-5-415. The section references new procedures for the appointment of a successor conservator under Section 62-5-428. The section also clarifies that a conservator’s resignation is not effective until a new conservator is appointed. This precludes a conservator from resigning and abandoning a protected person without court action.</p>

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<p>court may direct.</p> <p>(b) Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not an adjudication and does not preclude a formal proceeding.</p> <p>(c) After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order.</p> <p>REPORTER’S COMMENTS This permits any interested person to petition the court for subsequent orders including instructions.</p> <p>SECTION 62-5-417. General duty of conservator.</p> <p>In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Section 62-7-933.</p> <p>REPORTER’S COMMENTS This section imposes the standard of care applicable to trustees, the “prudent man dealing with the property of another” rule.</p>	<p>SECTION 62-5-414.</p> <p>If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, as determined by the court. <u>(A) In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Section 62-7-804.</u></p> <p><u>(B) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the protected person to participate in decisions, act in the person’s own behalf, and develop or regain the ability to manage the protected person’s estate and business affairs.</u></p> <p><u>(C) At any time the court determines appropriate, it may order a conservator to file a plan for protecting, managing, expending, and distributing the assets of the protected person’s estate. The plan must be approved, disapproved, or modified by the court, in informal or formal proceedings, as the court deems appropriate. Nothing in this section requires the court to oversee or approve the investment choices made by the conservator. The plan must be based on the actual needs of the protected person, take into consideration the best interest of the protected person and be updated, modified and revised as the needs and circumstances of the protected person require. The conservator shall</u></p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>SECTION 62-5-418. Inventory and records.</p>	<p><u>include in the plan:</u></p> <p>(1) <u>a statement of the extent to which the protected person may be able to develop or recover the ability to manage the person’s property and any planned steps to develop or restore the person’s ability;</u></p> <p>(2) <u>an estimate of the duration of the conservatorship; and</u></p> <p>(3) <u>projections of expenses and resources.</u></p> <p>(D) <u>In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the protected person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the protected person.</u></p> <p>REPORTER’S COMMENTS</p> <p>As revised by the 2012 amendment, this was formerly Section 62-5-417. The section establishes the duties of a conservator. This section adds the requirement that a conservator consult with and allow the protected person to participate in the management and application of his assets. The section also introduces the concept of a plan. This clarifies the authority of the probate court to require the conservator to submit a plan for the administration of a protected person’s estate. The section also requires the conservator to take into account the protected person’s estate plan when making decisions on investments, distributions, and other matters affecting the protected person’s assets. This obligation was unclear under prior law.</p> <p>SECTION 62-5-415.</p> <p>The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his</p>

<p>ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Parts 4 and 6</p>
<p>Within thirty days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The court may, for good cause shown, increase the allotted time. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.</p>	<p>predecessor. <u>Within sixty days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate to the best of the conservator's knowledge, information and belief. The court may, for good cause shown, grant an extension to file the inventory. The conservator shall provide a copy of the inventory to the protected person's guardian, if any, and any other persons the court may direct.</u></p>
<p>REPORTER'S COMMENTS Section 62-5-418 requires the conservator to file a verifiable inventory of the protected estate within thirty days after his appointment.</p>	<p>REPORTER'S COMMENTS As revised by the 2012 amendment, this was formerly Section 62-5-418. The section requires the conservator to file an inventory 60 days after his appointment, unless that date is extended by the probate court. The prior version of this section provided a list of persons who were to be given copies of the inventory. This section requires a copy be delivered only to the protected person's guardian, if he has one, and leaves to the probate court the decision of who else should be given a copy. The statement under prior law requiring the conservator to keep suitable records and make the same available to any interested person has been eliminated. The requirement to keep records and make them available is now fully covered under Section 62-5-416.</p>
<p>SECTION 62-5-419. Accounts.</p>	<p>SECTION 62-5-416.</p> <p>(a) Upon filing a petition and summons with the appointing court, a person interested in the welfare of a person for whom a conservator has been appointed may request an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief. The petition and summons must be served upon the conservator and other persons as the</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>Every conservator shall account to the court for his administration of the trust annually and upon his resignation or removal, and at other times as the court may direct. On termination of the protected person’s minority or disability a conservator shall account to the court. Upon the filing and service of summons and petition for approval of accounting, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters shown in connection with it and an order, made upon notice and hearing, allowing a final account adjudicates as to all unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship concerning the matters shown. In connection with an account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in a manner the court may specify.</p>	<p>court may direct.</p> <p>(b) Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not an adjudication and does not preclude a formal proceeding.</p> <p>(c) After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order.</p> <p><u>(A) A conservator shall report to the court regarding his administration of the estate annually, upon resignation or removal, on termination of the protected person’s minority or disability, upon the death of the protected person, and at other times as the court directs. The conservator may petition in formal proceedings under section 62-5-428 for:</u></p> <p><u>(1) an order allowing an intermediate report of a conservator, and adjudicating liabilities concerning the matters adequately disclosed in the accounting; and</u></p> <p><u>(2) an order allowing a final report and adjudicating all previously unsettled liabilities relating to the conservatorship.</u></p> <p><u>(B) A report must state or contain:</u></p> <p><u>(1) an accounting of receipts and disbursements during the period for which the report is made;</u></p> <p><u>(2) a list of the assets of the estate under the conservator’s control and the location of those assets; and</u></p> <p><u>(3) any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.</u></p> <p><u>(C)(1) The conservator shall provide a copy of the report to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand the report, and to any parent or guardian with whom the protected person resides.</u></p> <p><u>(2) The court may appoint a guardian ad litem to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs.</u></p>

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<p>REPORTER'S COMMENTS This section requires every conservator to account to the court annually and at the time of his resignation or removal. It also establishes protection for those dealing with the conservator.</p> <p>SECTION 62-5-420. Conservators; title by appointment.</p> <p>The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. Neither the appointment of a conservator nor the establishment of a trust in accordance with Title 44, Chapter 6, Article 6, is a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.</p> <p>REPORTER'S COMMENTS This section permits independent administration of the property of protected persons once the appointment of a conservator has been obtained. Any interested person may require the conservator to account in accordance with Section 62-5-419. As a trustee, a conservator holds title to the property of the protected person. Once appointed, he is free to carry on his fiduciary responsibilities. If he should default in these in any way, he may be made to account to the court.</p>	<p><u>(3) In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination in any manner directed by the court.</u></p> <p>REPORTER'S COMMENTS As revised by the 2012 amendment this section expands former Section 62-5-419. It provides a more detailed description of the type of report a conservator is to produce, and when the report is to be produced. It further provides a more restricted listing of who is to receive a copy of the report.</p> <p>SECTION 62-5-417.</p> <p>In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Section 62-7-933.</p> <p><u>The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact, unless otherwise provided in the court's order. Neither the appointment of a conservator or the establishment of a trust in accordance with Article 6, Chapter 6, Title 44, is a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest.</u></p> <p>REPORTER'S COMMENTS As revised by the 2012 amendments, this section was formerly Section 62-5-420. This section deletes the last phrase of the last sentence of former Section 62-5-420 which read 'but this section does not restrict the ability of a person to make specific provision by contract or dispositive instrument or other transaction.' The rights of a protected</p>

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<p>Unlike a situation involving appointment of a guardian, the appointment of a conservator has no bearing on the capacity of the disabled person to contract or engage in other transactions.</p> <p>SECTION 62-5-421. Recording of conservator’s letters.</p> <p>Letters of conservatorship transfer all assets of a protected person to the conservator. An order terminating a conservatorship transfers all assets of the estate from the conservator to the protected person or his successors. Letters of conservatorship, and orders terminating conservatorships, shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.</p>	<p>person following the appointment of a conservator is now more fully covered in Section 62-5-407.</p> <p>SECTION 62-5-418.</p> <p>Within thirty days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The court may, for good cause shown, increase the allotted time. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.</p> <p><u>Letters of conservatorship are evidence of vesting title of the protected person’s assets in the conservator, unless otherwise provided in the court’s order. An order terminating a conservatorship transfers all assets of the estate from the conservator to the protected person or his successors. Letters or certificates of conservatorship and terminations of appointment shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the counties of this State or other states where the protected person owns real estate, as is appropriate.</u></p> <p><u>Conservators may file letters of conservatorship with credit reporting agencies.</u></p> <p>REPORTER’S COMMENTS</p> <p>As revised by the 2012 amendment, this section was formerly Section 62-5-421. The primary change from prior law is the express permission for the conservator to file the letters of conservatorship with credit</p>

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<p>SECTION 62-5-422. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.</p> <p>Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is void unless the transaction is approved by the court after notice to interested persons and others as directed by the court.</p> <p>REPORTER’S COMMENTS This section allows court authorized sales and purchases of protected property.</p>	<p>reporting agencies.</p> <p>SECTION 62-5-419.</p> <p>Every conservator shall account to the court for his administration of the trust annually and upon his resignation or removal, and at other times as the court may direct. On termination of the protected person’s minority or disability a conservator shall account to the court. Upon the filing and service of summons and petition for approval of accounting, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters shown in connection with it and an order, made upon notice and hearing, allowing a final account adjudicates as to all unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship concerning the matters shown. In connection with an account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in a manner the court may specify.</p> <p><u>Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation, trust, or other entity in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest by the conservator is void unless the transaction is approved by the court in a proceeding in accordance with the procedure set forth in Section 62-5-428.</u></p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment this section was formerly Section 62-5-422. The wording of the former section left to the probate court’s discretion the procedure to follow in approving transactions involving self dealing by the conservator. The section directs the court to use the procedure established in Section 62-5-428.</p> <p>SECTION 62-5-420.</p>

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<p>SECTION 62-5-423. Persons dealing with conservators; protection.</p> <p>A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in Sections 62-5-408 and 62-5-422, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 62-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.</p> <p>REPORTER’S COMMENTS Section 62-5-423 carries Section 62-5-422 one step further by affording protection to bona fide purchasers for value of protected property.</p>	<p>The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. Neither the appointment of a conservator nor the establishment of a trust in accordance with Title 44, Chapter 6, Article 6, is a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.</p> <p><u>A person who in good faith either assists a conservator or deals with him for value in any transaction, other than those requiring a court order or approval as required in this part, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 62-5-424 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.</u></p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment, this was formerly Section 62-5-423. This section provides protection to bona fide purchasers for value of the property of a protected person when dealing with his conservator. The purpose of this section is to facilitate commercial transactions by</p>

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	<p>negating the traditional duty of inquiry found under the common law of trusts. Even the third party's actual knowledge that the third party is dealing with a conservator does not require that the third party inquire into the possession of or propriety of the conservator's exercise of a power. Nor is the third party, contrary to the common law, responsible for the proper application of funds or property delivered to the conservator. But consistent with the emphasis on limited conservatorship, the protection extended to third parties is not unlimited. Third parties are charged with knowledge of restrictions on the authority of conservators when the restrictions are endorsed on the conservator's letters.</p> <p>The protections provided by this section are limited by the last sentence of the section which provides that this section will be superseded by statutes relating to commercial transactions, such as the uniform commercial code, or by statutes relating to the transfer of securities.</p> <p>SECTION 62-5-421.</p> <p>Letters of conservatorship transfer all assets of a protected person to the conservator. An order terminating a conservatorship transfers all assets of the estate from the conservator to the protected person or his successors. Letters of conservatorship, and orders terminating conservatorships, shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.</p> <p><u>(1) Except as otherwise provided in subsections (2) and (3), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person.</u></p> <p><u>(2) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession is protected as if the</u></p>

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	<p><u>protected person had valid title.</u></p> <p><u>(3) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided by law.</u></p> <p>REPORTER’S COMMENTS</p> <p>This section provides a spendthrift effect for property of the protected person vested in the conservator. The section, like Section 62-5-420, is designed to allow the estate to be administered with a minimum of interference, and to make clear that the conservator, with respect to the property of the conservatorship, occupies a role similar to that of a trustee. The section is also designed to protect the estate, and hence the protected person, against possibly abusive or improvident claims. But some significant exceptions are recognized to protect the rights of third parties. An attempted transfer or assignment by the protected person, while ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages.</p> <p>Subsection (2) addresses a special situation. While title to certain tangible personal property, such as an automobile, is transferred by means of a document of title, title to most tangible personal property is transferred simply by delivery of possession. Sales of such property are often casual, and purchasers do not usually inquire into the source of the seller’s title. Upon the conservator’s appointment, title to a protected person’s tangible personal property, like title to the protected person’s other assets, is transferred from the protected person to the conservator. But this transfer of title will normally not be known to a prospective purchaser, particularly if the tangible personal property is still in the protected person’s possession. The effect of this subsection is to generally validate the title of such casual purchasers. The conservator may contest the purchaser’s title only if the purchaser failed to pay full value, the purchaser knew of the conservatorship, or the purchaser, based on the circumstances, should have inquired into the conservatorship’s existence.</p> <p>Subsection (3) clarifies that this section does not supersede</p>

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<p>SECTION 62-5-424. Powers of conservator in administration.</p> <p>(A) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.</p> <p>(B) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:</p> <ol style="list-style-type: none"> (1) collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he personally is interested; (2) receive additions to the estate; (3) invest and reinvest estate assets in accordance with subsection (A); (4) deposit estate funds in a bank including a bank operated by the conservator; (5) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish improvement, to raze existing or erect new party-walls or buildings; (6) vote a security, in person or by general or limited proxy; (7) pay calls, assessments, and other sums chargeable or accruing against or on account of securities; (8) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise whose stock or shares are publicly held; (9) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by 	<p>protections third parties may have under other law, such as under the statutes regulating commercial transactions.</p> <p>SECTION 62-5-422.</p> <p>Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is void unless the transaction is approved by the court after notice to interested persons and others as directed by the court.</p> <p><u>(A) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters and certificates of appointment, a conservator, acting reasonably in the best interest of the protected person and in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:</u></p> <ol style="list-style-type: none"> <u>(1) invest and reinvest funds of the estate as would a trustee, subject to the requirements of Section 62-7-804;</u> <u>(2) collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator personally is interested;</u> <u>(3) receive additions to the estate;</u> <u>(4) deposit estate funds in a financial institution including a financial institution operated by the conservator;</u> <u>(5) make ordinary or extraordinary repairs or alterations to buildings or other structures, demolish, improve, raze or erect existing or new partywalls or buildings;</u> <u>(6) vote a security, in person or by general or limited proxy;</u> <u>(7) pay calls, assessments, and other sums chargeable or accruing against or on account of securities;</u> <u>(8) sell or exercise stock subscription or conversion rights;</u> <u>(9) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a</u>

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<p>delivery, but the conservator is liable for an act of the nominee in connection with the stock so held;</p> <p>(10) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;</p> <p>(11) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of estate assets and the conservator has a lien on the estate as against the protected person for advances so made;</p> <p>(12) pay or contest a claim except as limited by Section 62-5-433; settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise except as limited by Section 62-5-433; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible;</p> <p>(13) pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate;</p> <p>(14) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;</p> <p>(15) pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;</p> <p>(16) employ persons, including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;</p> <p>(17) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and</p>	<p><u>corporation or other business enterprise whose stock or shares are publicly held;</u></p> <p><u>(10) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for an act of the nominee in connection with the stock so held;</u></p> <p><u>(11) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;</u></p> <p><u>(12) borrow money to be repaid from estate assets or otherwise;</u></p> <p><u>(13) advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of estate assets and the conservator shall have a lien on the estate as against the protected person for advances so made;</u></p> <p><u>(14)(a) pay or contest a claim except as limited by Section 62-5-432;</u></p> <p><u>(b) settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise except as limited by Section 62-5-432; and</u></p> <p><u>(c) release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible;</u></p> <p><u>(15) pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate;</u></p> <p><u>(16) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;</u></p> <p><u>(17) pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the protected person or the distributee or by paying the sum for the use of the protected person or the distributee either to his guardian or, if none, to a relative or other person with custody of his person;</u></p> <p><u>(18)(a) employ persons, including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator</u></p>

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<p>(18) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.</p> <p>(C) A conservator acting reasonably in efforts to accomplish the purpose for which he was appointed may act with court approval to:</p> <p>(1) continue or participate in the operation of any unincorporated business or other enterprise;</p> <p>(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;</p> <p>(3) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;</p> <p>(4) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;</p> <p>(5) enter into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;</p> <p>(6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;</p> <p>(7) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;</p> <p>(8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;</p> <p>(9) make gifts to charitable organizations and for other religious, charitable, eleemosynary, or educational purposes which are tax deductible as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate, if and only if the estate is ample to provide for the purposes implicit in the distributions authorized by Section</p>	<p><u>to advise or assist the conservator in the performance of his administrative duties; and</u></p> <p><u>(b) to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;</u></p> <p><u>(19) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;</u></p> <p><u>(20) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator; and</u></p> <p><u>(21) enter into a lease of a residence for the protected person for a term not exceeding one year.</u></p> <p><u>(B) A conservator acting reasonably in the best interest of the protected person and in efforts to accomplish the purpose for which he was appointed may file an application with the court requesting authority to:</u></p> <p><u>(1) continue or participate in the operation of any unincorporated business or other enterprise;</u></p> <p><u>(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;</u></p> <p><u>(3)(a) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and</u></p> <p><u>(b) to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;</u></p> <p><u>(4)(a) subdivide, develop, or dedicate land to public use;</u></p> <p><u>(b) to make or obtain the vacation of plats and adjust boundaries;</u></p> <p><u>(c) to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and</u></p> <p><u>(d) to dedicate easements to public use without consideration;</u></p> <p><u>(5) enter into a lease as lessor or lessee, other than a residential lease described in subsection (A)(21);</u></p> <p><u>(6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or</u></p>

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<p>62-5-425; (10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship.</p>	<p><u>unitization agreement:</u> (7) <u>grant an option involving disposition of an estate asset, or take an option for the acquisition of any asset;</u> (8) <u>undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;</u> (9) <u>make gifts to charitable organizations and for other religious, charitable, eleemosynary, or educational purposes which are tax deductible as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate, if and only if the estate is ample to provide for the purposes implicit in the distributions authorized by Section 62-5-423;</u> (10)(a) <u>encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship;</u> (b) <u>pay a reasonable fee to the conservator for services rendered;</u> <u>and</u> (c) <u>adopt an appropriate budget for routine expenditures of the protected person;</u> (11) <u>reimburse the conservator for monies paid to or on behalf of the protected person;</u> (12) <u>exercise or release the primary respondent's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;</u> (13) <u>enter into contracts; and</u> (14) <u>exercise options of the primary respondent to purchase securities or other property.</u> (C)(1) <u>The court may approve or deny any application for approval filed by the conservator under item (3), without notice, or may, in its discretion require the commencement of a formal proceeding under Section 62-5-428.</u> (2) <u>A conservator may apply to the court for ratification of any action taken in good faith. The court may approve or deny the application, without notice, or may, in its discretion require the</u></p>

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<p>REPORTER'S COMMENTS</p> <p>Section 62-5-424 sets out the powers of a conservator in administration. Subsection (a) provides that a conservator has all powers conferred in this section and also any additional powers granted by law to trustees in South Carolina. In subsection (b) a conservator is expressly granted power to invest and reinvest funds of the estate "as would a trustee," without court authorization or confirmation. Subsection (c) contains a list of eighteen specifically itemized powers which a conservator has and may exercise without court authorization or confirmation, where "acting reasonably in efforts to accomplish the purpose for which he was appointed." Subsection (d) contains a list of nine specifically itemized powers which a conservator may exercise with court approval.</p>	<p><u>commencement of a formal proceeding under Section 62-5-428.</u></p> <p><u>(3) A conservator may request instructions concerning the conservator's fiduciary responsibility and may make requests for expenditure of funds for the protected person by filing an application with the court, or by commencing a formal proceeding in accordance with Section 62-5-428. If application is made, the court may approve or deny the application without notice, or may, in its discretion require formal proceedings.</u></p> <p>REPORTER'S COMMENTS</p> <p>As revised by the 2012 amendment, this section was formerly section 62-5-424. This section sets out the powers of a conservator in administration.</p> <p>Subsection (A) sets out twenty-one specifically itemized powers which a conservator has and may exercise without court authorization or confirmation, unless such powers have been limited by the court. There is a requirement that the conservator must act reasonably in the best interest of the protected person. Subsection (A)(1) grants the conservator authority to invest and reinvest funds of the estate as would a trustee and imposes the requirements of Section 62-7-804. Subsection (A)(21) grants the power to 'enter into a lease of a residence for the protected person for a term not exceeding one year.'</p> <p>Subsection (B) requires the conservator to file an application to the court requesting authority to exercise any of the fourteen powers set forth. Upon the filing of such an application, the court may approve or deny without notice or may require the conservator to commence a formal proceeding under section 62-5-428.</p> <p>Subsection (C)(2) allows the conservator to file an application for ratification of an action taken in good faith. The court may approve or deny without notice or may require the conservator to commence a formal proceeding under Section 62-5-428.</p> <p>Subsection (C)(3) allows the conservator to file an application requesting instructions or expenditures or to commence a formal proceeding under Section 62-5-428. If an application is filed, the court</p>

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<p>SECTION 62-5-425. Distributive duties and powers of conservator.</p> <p>(a) A conservator may expend or distribute sums from the principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:</p> <p>(1) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.</p> <p>(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of</p>	<p>may approve or deny without notice or may require a formal proceeding under Section 62-5-428.</p> <p>SECTION 62-5-423.</p> <p>A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in Sections 62-5-408 and 62-5-422, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 62-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.</p> <p><u>(A) A conservator may expend or distribute sums from the estate, without further court authorization, for the health, education, maintenance and support of the protected person and his dependents in accordance with the following principles:</u></p> <p><u>(1) The expenditures must be consistent with the court-approved plan under section 62-5-414, if any.</u></p> <p><u>(2) The conservator is to consider recommendations relating to the appropriate standard of health, education, maintenance and support for the protected person made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations furnishing health, education, maintenance or support to the protected person pursuant to the recommendations of a parent or guardian unless the conservator has actual knowledge that the parent or</u></p>

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<p>living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person.</p> <p>(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person.</p> <p>(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.</p> <p>(b) When a minor who has not been adjudged disabled under Section 62-5-401(2) attains his majority or is emancipated, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. An individual under the age of eighteen who is also married shall remain a minor for purposes of this subsection until attaining majority or emancipation.</p> <p>(c)(1) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, then he shall petition the court, and after determination by the court that the disability has ceased in accordance with Section 62-5-430, the conservator, after meeting all prior claims and expenses of administration shall pay over and distribute all funds and properties to the former protected person as soon as possible.</p> <p>(2) When the conservator is satisfied that a protected person's estate has a value of less than five thousand dollars, then he may petition the court, and after determination by the court that the protected person's estate has a value of less than five thousand dollars, the court in its discretion may terminate the conservatorship and order the conservator, after meeting all prior claims and expenses of administration, to pay over and distribute all funds and properties to or for the protected person as soon as possible and in accordance with Section 62-5-103.</p> <p>(d) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may</p>	<p><u>guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.</u></p> <p><u>(3) The conservator is to expend or distribute sums reasonably necessary for the health, education, maintenance and support of the protected person with due regard to: (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him, (ii) the accustomed standard of living of the protected person and members of his household, and (iii) other funds or sources used for the support of the protected person.</u></p> <p><u>(4) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person.</u></p> <p><u>(B)(1) Funds expended under this section may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.</u></p> <p><u>(2) If the conservator determines that it is reasonably necessary to supply funds to the protected person, the conservator may provide such funds to the protected person through reasonable financial methods, including, but not limited to, checks, currency, debit card, or allowance. All funds so provided shall be reported on the accountings as required by the court.</u></p> <p><u>(C) When a person who is incapacitated solely by reason of minority attains the age of majority or is emancipated by the family court, his conservator, after meeting expenses of administration, shall pay over and distribute all remaining funds and properties to the former protected person as soon as practicable pursuant to Section 62-5-428(4), unless a:</u></p> <p><u>(1) protective order has been issued because the protected person</u></p>

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<p>have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after thirty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 62-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 62-3-308 and Parts 6 through 10 of Article 3 [Sections 62-3-601 et seq. through Sections 62-3-1001 et seq.] except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.</p> <p>(e) A person shall not be disqualified as an executor of a deceased protected person solely by reason of his having been appointed and acting conservator of that protected person.</p>	<p><u>is incapacitated; or</u></p> <p><u>(2) protective proceeding or other petition with regard to the protected person is pending.</u></p> <p><u>A protected person under the age of eighteen who is married shall remain a minor for purposes of this subsection until the person attains the age of the age of majority or emancipation.</u></p> <p><u>(D) When the conservator is satisfied that a protected person's incapacity has ceased, the conservator shall petition the court, and after determination by the court that the incapacity has ceased in accordance with Section 62-5-428, the conservator, after paying outstanding expenses of administration and any claims approved by the court, shall pay over and distribute all remaining funds and properties to the former protected person as soon as practicable.</u></p> <p><u>(E) When the conservator is satisfied that a protected person's estate has a value of less than ten thousand dollars, he may file an application with the court for termination of the conservatorship and permission to pay the remaining funds and properties to or for benefit of the protected person in accordance with Section 62-5-103. The court may approve or deny the application, without notice, or may, in its discretion require the commencement of a formal proceeding under Section 62-5-428. If the court determines that the protected person's estate has a value of less than ten thousand dollars, the court may on its own accord, in its discretion, terminate the conservatorship and order the conservator, after paying outstanding expenses of administration and any claims approved by the court, to pay over and distribute all remaining funds and properties to or for the protected person as soon as practicable in accordance with Section 62-5-103.</u></p> <p><u>(F)(1) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the personal representative or a beneficiary named in the will of the delivery, and retain the estate for delivery to a duly appointed personal representative of the deceased protected person or other persons entitled thereto. If after thirty days from the death of the protected person no person has</u></p>

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<p>REPORTER’S COMMENTS</p> <p>Section 62-5-425 sets out the distributive duties and powers of a conservator. Subsection (a) provides that a conservator may expend or distribute sums from the principal of the estate without court authorization or confirmation for the support, care, or benefit of the protected person and his dependents in accordance with principles stated in paragraphs (1) through (4). Subsection (b) simply directs distribution to a former minor when he attains majority, unless he has been adjudged disabled under Section 62-5-401(2). Subsection (c) directs a conservator for a disabled person to petition the court when the conservator is satisfied that disability has ceased, and upon determination that the disability has ceased, to make distribution to the formerly disabled person. Subsection (d) provides for distribution in case of the death of the protected person. Subsection (e) merely provides that previous service as a conservator for a protected person does not disqualify the previous conservator from serving as executor of the protected person.</p>	<p><u>been appointed personal representative and no application or petition for appointment is pending in the court, the conservator may apply for appointment as personal representative. The conservator shall deliver the estate of the deceased protected person to his duly appointed personal representative or other persons entitled thereto under the law.</u></p> <p><u>(2) A person shall not be disqualified as a personal representative of a deceased protected person solely by reason of his having been appointed or acting as conservator for that protected person.</u></p> <p>REPORTER’S COMMENTS</p> <p>As revised by the 2012 amendments, this section was formerly section 62-5-425. This section sets out the principles to be followed by the conservator in making distributions. Subsection (1)(A) requires that if there is a court approved plan under section 62-5-414, expenditures must be consistent with that plan.</p> <p>Subsection (B)(2) is an addition allowing the conservator, when reasonably necessary, to allow the protected person access to funds through mechanisms including a checking account, a debit card, or cash.</p> <p>Subsection (C) directs distribution to a former minor upon attaining majority unless there is an existing protective order based on incapacity or a protective proceeding or other petition is pending.</p> <p>Subsection (D) provides that the conservator shall petition the court for a redetermination of capacity of the protected person if the conservator is satisfied that the incapacity has ceased.</p> <p>Subsection (E) allows the conservator to file an application for termination of the conservatorship if the conservator is satisfied that the protected person’s estate is less than \$10,000.00. Even without application, the court may terminate the conservatorship if the value is less than \$10,000.00.</p> <p>Subsection (F)(1) provides for distribution at the death of the protected person. The conservator is required to deliver any will of the protected person in his possession to the court and to notify the personal representative or a beneficiary that he has done so.</p>

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<p>SECTION 62-5-426. Enlargement or limitation of powers of conservator.</p>	<p>Subsection (F)(2) provides that previous service as a conservator for the protected person does not disqualify the conservator from serving as personal representative of the estate of the protected person.</p> <p>SECTION 62-5-424.</p> <p>(A) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.</p> <p>(B) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:</p> <p style="padding-left: 40px;">(1) collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he personally is interested;</p> <p style="padding-left: 40px;">(2) receive additions to the estate;</p> <p style="padding-left: 40px;">(3) invest and reinvest estate assets in accordance with subsection (A);</p> <p style="padding-left: 40px;">(4) deposit estate funds in a bank including a bank operated by the conservator;</p> <p style="padding-left: 40px;">(5) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish improvement, to raze existing or erect new party walls or buildings;</p> <p style="padding-left: 40px;">(6) vote a security, in person or by general or limited proxy;</p> <p style="padding-left: 40px;">(7) pay calls, assessments, and other sums chargeable or accruing against or on account of securities;</p> <p style="padding-left: 40px;">(8) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise whose stock or shares are publicly held;</p> <p style="padding-left: 40px;">(9) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security</p>

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	<p>may pass by delivery, but the conservator is liable for an act of the nominee in connection with the stock so held;</p> <p>(10) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;</p> <p>(11) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of estate assets and the conservator has a lien on the estate as against the protected person for advances so made;</p> <p>(12) pay or contest a claim except as limited by Section 62-5-433; settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise except as limited by Section 62-5-433; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible;</p> <p>(13) pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate;</p> <p>(14) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;</p> <p>(15) pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;</p> <p>(16) employ persons, including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;</p> <p>(17) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and</p>

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	<p>(18) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.</p> <p>(C) A conservator acting reasonably in efforts to accomplish the purpose for which he was appointed may act with court approval to:</p> <p>(1) continue or participate in the operation of any unincorporated business or other enterprise;</p> <p>(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;</p> <p>(3) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;</p> <p>(4) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;</p> <p>(5) enter into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;</p> <p>(6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;</p> <p>(7) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;</p> <p>(8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;</p> <p>(9) make gifts to charitable organizations and for other religious, charitable, eleemosynary, or educational purposes which are tax deductible as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate, if and only if the estate is ample to provide for the purposes implicit in the distributions authorized by Section</p>

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<p>The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by Sections 62-5-424 and 62-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by Section 62-5-424 or Section 62-5-425, the limitation shall be endorsed upon his letters of appointment and upon any certificate evidencing his appointment.</p> <p>REPORTER'S COMMENTS Section 62-5-426 permits the court to limit the powers of a conservator which he otherwise would have pursuant to Sections 62-5-424 and 62-5-425 and also to relieve him of any limitation at any time.</p> <p>SECTION 62-5-427. Preservation of estate plan.</p>	<p>62-5-425; (10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship. <u>The court may, at the time of appointment or at any time thereafter, limit the powers of a conservator otherwise conferred by Sections 62-5-422 and 62-5-423, or previously conferred by the court, and may at any time relieve the conservator of any limitation previously imposed by the court. If the court limits any power conferred on the conservator by Section 62-5-422 or Section 62-5-423, the limitation shall be endorsed upon his letters of appointment and upon any certificate evidencing his appointment. Notwithstanding the foregoing, the failure to endorse any limitation upon the conservator's letters or certificate shall not relieve the conservator of the limitation imposed by order of the court.</u></p> <p>REPORTER'S COMMENTS As revised by the 2012 amendments, this section was former Section 62-5-426. This section permits the court to limit the powers of a conservator or relieve the conservator of a previously imposed limitation. It further provides that limitations be endorsed on the letters of appointment, but failure to so endorse does not relieve the conservator of the limitations.</p> <p>SECTION 62-5-425.</p> <p>(a) A conservator may expend or distribute sums from the principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles: (1) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant</p>

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	<p>to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.</p> <p>(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person.</p> <p>(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person.</p> <p>(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.</p> <p>(b) When a minor who has not been adjudged disabled under Section 62-5-401(2) attains his majority or is emancipated, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. An individual under the age of eighteen who is also married shall remain a minor for purposes of this subsection until attaining majority or emancipation.</p> <p>(c)(1) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, then he shall petition the court, and after determination by the court that the disability has ceased in accordance with Section 62-5-430, the conservator, after meeting all prior claims and expenses of administration shall pay over and distribute all funds and properties to the former protected person as</p>

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	<p>soon as possible.</p> <p>(2) When the conservator is satisfied that a protected person's estate has a value of less than five thousand dollars, then he may petition the court, and after determination by the court that the protected person's estate has a value of less than five thousand dollars, the court in its discretion may terminate the conservatorship and order the conservator, after meeting all prior claims and expenses of administration, to pay over and distribute all funds and properties to or for the protected person as soon as possible and in accordance with Section 62-5-103.</p> <p>(d) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after thirty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 62-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 62-3-308 and Parts 6 through 10 of Article 3 [Sections 62-3-601 et seq. through Sections 62-3-1001 et seq.] except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator</p>

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<p>In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of Section 62-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated.</p> <p>REPORTER’S COMMENTS This section provides that the conservator and the court “should” take into account any known estate plan of the protected person, in making investments, in distribution of assets, and in exercising certain other powers.</p> <p>SECTION 62-5-428. Claims against protected person; enforcement.</p> <p>(a)(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:</p> <p>(i) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed;</p> <p>(ii) the claimant may file a written statement of the claim, in the form</p>	<p>as personal representative.</p> <p>(e) A person shall not be disqualified as an executor of a deceased protected person solely by reason of his having been appointed and acting conservator of that protected person.</p> <p><u>In investing the estate, and in selecting assets of the estate for distribution, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court must take into account any known estate plan of the protected person, any revocable trust of which the protected person is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which the protected person may have originated.</u></p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment, this section was formerly Section 62-5-427 and provides that the conservator and the court must take into account any known estate plan of the protected person, in making investments, in distribution of assets, and in exercising certain other powers.</p> <p>SECTION 62-5-426.</p> <p>The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by Sections 62-5-424 and 62-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by Section 62-5-424 or Section 62-5-425, the limitation shall be endorsed upon his letters of appointment and upon any certificate evidencing his appointment.</p> <p><u>If a creditor has notice of appointment of a conservator, all pleadings must be served upon the conservator. Within thirty days after the conservator becomes aware of a proceeding in which the protected person is a party, the conservator must notify the court. The conservator</u></p>

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<p>prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator.</p> <p>(2) A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. Every claim which is disallowed in whole or part by the conservator is barred so far as not allowed unless the claimant files and properly serves a summons and petition for allowance in the court or commences a proceeding against the conservator not later than thirty days after the mailing of the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.</p> <p>(b) A claimant whose claim has not been paid may petition, by service of the summons and the petition, the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is initiated against a protected person, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.</p> <p>(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference must be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.</p> <p>REPORTER’S COMMENTS Section 62-5-428 sets out the procedure for presentation and enforcement of claims against the estate of the protected person. Presentation of a claim in the prescribed manner tolls any statute of limitations relating to the claim until thirty days after its disallowance. In subsection (c) preference is given to “prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration”.</p>	<p><u>may request instructions from the court as necessary.</u></p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment, this section was formerly Section 62-5-428 which has been substantially modified. If the creditor has notice that there is a conservator appointed, the conservator must be served with the pleadings. When the conservator becomes aware of such a proceeding, he must notify the court and may seek instructions.</p>

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<p>SECTION 62-5-429. Individual liability of conservator.</p> <p>(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the court of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.</p> <p>(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.</p> <p>(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.</p> <p>(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.</p> <p>REPORTER’S COMMENTS Section 62-5-429 relieves a conservator of personal liability for contracts properly entered into in his fiduciary capacity unless he fails to reveal his representative capacity and identify the estate in the contract, and also relieves him from obligations arising from ownership or control of property and tort liability unless he is personally at fault. Claims may be asserted by proceeding against the conservator in his</p>	<p>SECTION 62-5-427.</p> <p>In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of Section 62-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated.</p> <p><u>(1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.</u></p> <p><u>(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.</u></p> <p><u>(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable.</u></p> <p><u>(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.</u></p> <p>REPORTER’S COMMENTS As amended by the 2012 amendment, this section was formerly section 62-5-429.</p>

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<p>fiduciary capacity, whether or not he is individually liable. Questions of liability between the conservator and the estate may be determined in a proceeding for accounting or other appropriate proceeding.</p>	<p>Subsection (1) relieves a conservator of personal liability for contracts properly entered into in his fiduciary capacity unless he fails to reveal his representative capacity and identify the estate in the contract.</p> <p>Subsection (2) relieves the conservator from obligations arising from ownership or control of property and tort liability unless he is personally at fault.</p> <p>Subsection (3) states that claims may be asserted by proceeding against the conservator in his fiduciary capacity, whether or not he is individually liable.</p> <p>Subsection (4) addresses how questions of liability between the conservator and the estate may be determined.</p> <p>SECTION 62-5-428.</p> <p>(a)(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:</p> <p style="padding-left: 40px;">(i) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed;</p> <p style="padding-left: 40px;">(ii) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator.</p> <p>(2) A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. Every claim which is disallowed in whole or part by the conservator is barred so far as not allowed unless the claimant files and properly serves a summons and petition for allowance in the court or commences a proceeding against the conservator not later than thirty days after the mailing of the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar.</p>

ARTICLE 5: Parts 4 and 6 EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Parts 4 and 6
<p>SECTION 62-5-430. Proceeding to terminate conservatorship; application; notice.</p> <p>(A) The protected person, the conservator, or any other interested person, by service of a summons and petition, may request that the court terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing, that the disability of the protected person has ceased, may terminate the conservatorship.</p> <p>(B) The protected person, his personal representative, or the conservator may make application for the termination of the conservatorship when the protected person has attained his majority or if the protected person is deceased. Notice must be given to those persons as the court may</p>	<p>The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.</p> <p>(b) A claimant whose claim has not been paid may petition, by service of the summons and the petition, the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is initiated against a protected person, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.</p> <p>(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference must be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.</p> <p><u>(1)(A) Upon filing of a summons and petition with the appointing court, the protected person, the conservator, or interested person may request an order:</u></p> <p><u>(i) requiring bond or security or additional bond or security, or reducing bond;</u></p> <p><u>(ii) requiring an accounting for the administration of the conservatorship;</u></p> <p><u>(iii) directing distributions from the protected person’s estate when the conservator has denied the request and has declined to file an application for expenditure;</u></p> <p><u>(iv) removing the conservator and appointing a temporary or successor conservator;</u></p> <p><u>(v) limiting or expanding the conservatorship;</u></p> <p><u>(vi) adjudicating liabilities pursuant to Section 62-5-416(1);</u></p> <p><u>(vii) authorizing a transaction involving a conflict of interest pursuant to Section 62-5-419;</u></p> <p><u>(viii) authorizing or approving an action of the conservator pursuant to Section 62-5-422(B);</u></p> <p><u>(ix) accepting the resignation of the conservator and appointing a temporary or successor conservator, if necessary;</u></p>

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<p>direct.</p> <p>REPORTER'S COMMENTS Section 62-5-430 provides that the conservatorship may be terminated upon determination, after notice and hearing, that the minority or disability of the protected person has ceased.</p>	<p><u>(x) terminating a conservatorship for reasons other than death or attaining majority; and</u></p> <p><u>(xi) granting other appropriate relief.</u></p> <p><u>(B) The procedure for obtaining orders subsequent to appointment is as follows:</u></p> <p><u>(i) Upon the filing of a summons and petition, the summons and petition shall be served upon the protected person, the conservator, the guardian, if any, the spouse of the protected person, the adult children whose whereabouts are reasonably ascertainable of the protected person, the parents of the protected person, if there is no spouse or adult child, any person who, under section 62-5-408, has equal or greater priority for appointment as the appointed conservator, any person with whom the protected person resides outside of a health care facility, group home, homeless shelter, or prison, and if the conservatorship is for the purpose of receiving veterans' benefits, the Secretary of the Department of Veterans' Affairs.</u></p> <p><u>(ii) The petition shall state the relief sought and the reasons the relief is necessary, desirable or beneficial for the protected person.</u></p> <p><u>(iii) After the filing of the summons and petition with the court and service upon the protected person, the court shall appoint a guardian ad litem for the protected person, with the duties and responsibilities set forth in Section 62-5-830.</u></p> <p><u>(iv) As soon as the interests of justice may allow, but after the time for response to the petition has elapsed as to all parties served, the court shall hold a hearing on the merits of the petition. The protected person and all parties not in default must be given notice of the hearing as provided in Section 62-1-401. Nothing in this section prohibits all parties not in default from waiving a hearing on a petition and the court for good cause may entertain a consent order on any petition.</u></p> <p><u>(v) The court may issue interim orders, for a period not to exceed ninety days, regarding the assets of the protected person until a hearing is held and a final order is issued.</u></p> <p><u>(2) Upon the death of the protected person, the conservator or the personal representative of the deceased protected person's estate may</u></p>

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	<p><u>make application for the termination of the conservatorship and approval of the final accounting of the administration of the conservatorship estate. Notice must be given to those persons as the court may direct.</u></p> <p><u>(3) Upon the death of the protected person, the conservator may make application for the approval of payment of funeral expenses. Notice must be given to those persons as the court may require.</u></p> <p><u>(4) Subject to the provisions of Section 62-5-423(C), upon the protected person's attaining the age of majority or being emancipated by the family court, the conservator shall make application for the termination of the conservatorship and the approval of the final accounting of the administration of the conservatorship. Notice must be given to the former protected person and such other persons as the court directs. Following approval of the accounting, final distribution of the remaining funds and properties as ordered by the court and the filing of proof of distribution, the court will terminate the conservatorship.</u></p> <p><u>(5) Following the procedure set forth in subsection (B)(1), the protected person or any person interested in his welfare may petition for an order adjudicating or readjudicating the protected person's incapacity. The court may issue an order to specify a minimum period, not exceeding one year, during which no petition for adjudication that the protected person is no longer incapacitated may be filed without special leave of the court. Subject to this restriction, the protected person or the conservator may petition the court that the protected person is no longer incapacitated, and for termination of the protective order, which must be proved by a preponderance of the evidence.</u></p> <p>REPORTER'S COMMENTS</p> <p>As revised by the 2012 amendment, this section was formerly Section 62-5-430, which has been significantly expanded.</p> <p>Subsection (1) addresses the procedure for requesting an order after the initial establishment of the conservatorship.</p> <p>Subsection (2) allows for termination of a conservatorship upon the</p>

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	<p>death of the protected person by application to the court. The conservator may also apply for approval of payment of funeral expenses.</p> <p>Subsection (4) addresses petitions for adjudication and re-adjudication of incapacity. The court may restrict the filing of a petition for adjudication.</p> <p>SECTION 62-5-429.</p> <p>(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the court of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.</p> <p>(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.</p> <p>(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.</p> <p>(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.</p> <p><u>(A) Any person indebted to a protected person, or having possession of property of or an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him</u></p>

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<p>SECTION 62-5-432. Foreign conservator; proof of authority; bond; powers.</p> <p>If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, then, except as provided in Section 62-5-431, a domiciliary foreign conservator may file with the</p>	<p><u>or on his behalf stating:</u></p> <p><u>(1) that no protective proceeding relating to the protected person is pending in this State; and</u></p> <p><u>(2) that the foreign conservator is entitled to payment or to receive delivery.</u></p> <p><u>(B) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.</u></p> <p>REPORTER’S COMMENTS This section provides for payment of debts and delivery of property to a foreign conservator without local proceedings.</p> <p>SECTION 62-5-430.</p> <p>(A) The protected person, the conservator, or any other interested person, by service of a summons and petition, may request that the court terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing, that the disability of the protected person has ceased, may terminate the conservatorship.</p> <p>(B) The protected person, his personal representative, or the conservator may make application for the termination of the conservatorship when the protected person has attained his majority or if the protected person is deceased. Notice must be given to those persons as the court may direct.</p> <p><u>(A) If a conservator has not been appointed in this State and a petition for a protective order is not pending in this State, a conservator appointed in another state, after giving notice to the appointing court of</u></p>

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<p>court in this State in all counties in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this State all powers of a local conservator and maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.</p> <p>REPORTER’S COMMENTS This section provides that a foreign conservator may file authenticated copies of his appointment in all counties where the protected person has property and exercise all powers of a local conservator, if no local conservator has been appointed and no petition is pending.</p> <p>SECTION 62-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings.</p> <p>Any person indebted to a protected person, or having possession of property of or an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:</p> <p>(1) that no protective proceeding relating to the protected person is pending in this State;</p> <p>(2) that the foreign conservator is entitled to payment or to receive delivery.</p> <p>If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.</p>	<p><u>an intent to register, may register the protective order in this State by filing in any appropriate county of this state a certified copy of the letters of office in the register of deeds and also filing a clocked copy of the letters of office, a certified copy of the order, and any bond in the probate court.</u></p> <p><u>(B) Upon registration of a protective order from another state, the conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.</u></p> <p><u>(C) A court of this State may grant any relief available under this part and other law of this State to enforce a registered order.</u></p> <p>REPORTER’S COMMENTS As revised by the 2012 amendment, this section was formerly 62-5-432. It matches Sections 62-5-717 and 62-5-718 which address registration of a protective order from another state when the protected person is an adult. It is included here to clarify that this would also apply to protective orders for minors.</p> <p>SECTION 62-5-431.</p> <p>Any person indebted to a protected person, or having possession of property of or an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:</p> <p>(1) that no protective proceeding relating to the protected person is pending in this State;</p> <p>(2) that the foreign conservator is entitled to payment or to receive</p>

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<p>REPORTER’S COMMENTS</p> <p>Section 62-5-431 provides that any debtor (or person having possession of property) of a protected person may pay the debt (or deliver the property) to any conservator or other fiduciary appointed by a court of the state of residence of the protected person, upon presentation by the fiduciary of proof of appointment and his affidavit that there is no protective proceeding relating to the protected person pending in this State and that the foreign fiduciary is entitled to payment or receive delivery. The person making payment or delivery is then discharged.</p> <p>(See Part 6 of Article 5 for existing Code language)</p>	<p>delivery.</p> <p>If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.</p> <p><u>(A) For purposes of this section:</u></p> <p><u>(1) The term ‘VA’ means the United States Department of Veterans’ Affairs or its successor.</u></p> <p><u>(2) The terms ‘estate’ and ‘income’ shall include only monies received by a conservator from the VA, all real and personal property acquired in whole or in part with such monies, and all earnings, interest, and profits derived from such monies.</u></p> <p><u>(3) The term ‘benefits’ means all monies payable by the United States through the VA.</u></p> <p><u>(4) The term ‘Secretary’ means the Secretary of the United States Department of Veterans’ Affairs or its successor.</u></p> <p><u>(5) The term ‘protected person’ means a beneficiary of the VA.</u></p> <p><u>(6) The term ‘conservator’ means any person acting as a fiduciary for any protected person.</u></p> <p><u>(B)(1) Whenever, pursuant to any law of the United States or regulation of the VA, the secretary requires, prior to payment of benefits, that a conservator be appointed for a protected person, the appointment shall be made in the manner provided in Section 62-5-403, except to the extent this section requires otherwise. The petition shall show that the person to be protected has been rated incapable of handling his estate and monies on examination by the VA in accordance with the laws and regulations governing the VA.</u></p> <p><u>(2) When a petition is filed for the appointment of a conservator and a certificate of the Secretary or his representative is filed setting forth the fact that the appointment of a conservator is a condition precedent to the payment of any monies due the protected person by the VA, the certificate shall be prima facie evidence of the necessity for the appointment and no examiner’s report shall be required.</u></p> <p><u>(C)(1) Except as hereinafter provided or as otherwise permitted by</u></p>

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	<p><u>the VA, no person shall serve as conservator of any protected person if such proposed conservator shall at that time be acting as conservator for five protected persons. Upon presentation of a petition by an attorney of the VA under this section alleging that a conservator is acting in a fiduciary capacity for more than five protected persons and requesting his discharge as a conservator of any protected person for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from the conservator and shall discharge such conservator in all requested cases. The limitations of this section shall not apply when the conservator is a bank or trust company acting for protected persons' estates.</u></p> <p><u>(2) The conservator shall file such inventory, accountings, exhibits or other pleadings with the court as provided by law and copies shall be filed with the VA.</u></p> <p><u>(3) Every conservator shall invest the surplus funds in his protected person's estate in such securities, or otherwise, as allowed by law, and in which the conservator shall have no interest. The funds may be invested, without prior court authorization, in direct interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are both unconditionally guaranteed by the United States Government.</u></p> <p><u>(4) Whenever a copy of any public record is required by the VA to be used in determining the eligibility of any person to participate in benefits made available by the VA, the official charged with the custody of the public record shall without charge provide the applicant for the benefits or any person acting on his behalf or the representative of the VA with a certified copy of the record.</u></p> <p><u>(D) The Secretary or his successor is and shall be a party in interest:</u></p> <p><u>(1) in any proceeding brought under any law of this State for the appointment, confirmation, recognition, or removal of any conservator of a minor, or of a mentally incompetent person, to whom or on whose behalf benefits have been paid or are payable by the VA, its predecessor or successor;</u></p> <p><u>(2) in any conservatorship proceeding involving such person or</u></p>

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	<p><u>his estate:</u></p> <p><u>(3) in any suit or other proceeding arising out of the administration of such person’s estate or assets; and</u></p> <p><u>(4) in any proceeding the purpose of which is the removal of the disability of minority or of mental incompetency of such person.</u></p> <p><u>(E) In any case or proceeding involving property or funds of the minor or mentally incompetent person not derived from the VA, the VA shall not be a necessary party but may be a proper party to such proceedings. This section shall not apply unless the VA designates in a writing filed with the Secretary of State, the name and address of its chief attorney, acting chief attorney or other agent within this State as a person authorized to accept service of process or upon whom process may be served.</u></p> <p><u>(F) For services as conservator of funds paid from the VA, compensation payable to the conservator shall not exceed five percent of the income of the protected person during any year. If extraordinary services are rendered by any such conservator the court may, upon application of the conservator and notice to the VA as provided in this section, authorize additional compensation payable from the estate of the protected person. No compensation shall be allowed on the corpus of an estate derived from payments from the VA. The conservator may be allowed reimbursement from the estate of his protected person for reasonable premiums paid by him to any corporate surety upon his bond.</u></p> <p>REPORTER’S COMMENTS</p> <p>As revised by the 2012 amendments, this section is a distillation of provisions of the Uniform Veterans’ Guardianship Act, which was formerly Part 6, Article 5, Title 62. This section should be taken into consideration whenever the primary respondent is receiving or will receive moneys from the VA. In general, the proceeding is the same as that contained in section 62-5-403, except that a certificate of the Secretary or his representative replaces the necessity for an examiner and there may be a limit on the number of persons for whom a</p>

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<p>SECTION 62-5-433. Definitions; procedures for settlement of claims in favor of or against minors or incapacitated persons.</p> <p>(A)(1) For purposes of this section and for any claim exceeding twenty-five thousand dollars in favor of or against any minor or incapacitated person, “court” means the circuit court of the county in which the minor or incapacitated person resides or the circuit court in the county in which the suit is pending. For purposes of this section and for any claim not exceeding twenty-five thousand dollars in favor of or against any minor or incapacitated person, “court” means either the circuit court or the probate court of the county in which the minor or incapacitated person resides or the circuit court or probate court in the county in which the suit is pending.</p> <p>(2) “Claim” means the net or actual amount accruing to or paid by the minor or incapacitated person as a result of the settlement.</p> <p>(3) “Petitioner” means either a conservator appointed by the probate court for the minor or incapacitated person or the guardian or guardian ad litem of the minor or incapacitated person if a conservator has not been appointed.</p> <p>(B) The settlement of any claim over twenty-five thousand dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property must be effected on his behalf in the following manner:</p> <p>(1) The petitioner must file with the court a verified petition setting</p>	<p>conservator may act.</p> <p>SECTION 62-5-432.</p> <p>If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, then, except as provided in Section 62-5-431, a domiciliary foreign conservator may file with the court in this State in all counties in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this State all powers of a local conservator and maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.</p> <p><u>(A) For purposes of this section, the following definitions shall apply:</u></p> <p><u>(1) ‘Court’ means the probate court or the circuit court of the county in which the minor or incapacitated person resides or any court of this State in which a legal action regarding the claim in favor of or against the minor or incapacitated person has been properly commenced.</u></p> <p><u>(2) ‘Claim’ means the net or actual amount payable to or on behalf of or paid by the minor or incapacitated person as a result of the settlement of a legal matter resulting in the payment of money or the delivery of real or personal property.</u></p> <p><u>(3) ‘Conservator’ means:</u></p> <p><u>(a) for residents of this state a conservator appointed for the minor or incapacitated person by the probate court for the county in which the minor or incapacitated person resides; and</u></p> <p><u>(b) for a nonresident of this State, a person appointed by a court in the state of residence of the minor or incapacitated person and who has authority and duties similar to those of a conservator in this state or a person appointed conservator for a nonresident by a probate court in this state in a county where the nonresident has property or the</u></p>

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<p>forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, if any, and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved. For all claims that exceed twenty-five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement is in the best interests of the minor or incapacitated person.</p> <p>(2) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, to receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person.</p> <p>(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner shall, upon receiving the money or personal property, pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.</p> <p>(C) The settlement of any claim that does not exceed twenty-five thousand dollars in favor of or against a minor or incapacitated person for the payment of money or the possession of personal property may be effected in any of the following manners:</p> <p>(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62-5-424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money</p>	<p><u>right to take legal action.</u></p> <p><u>(B)(1) The settlement of any claim in favor of or against any minor or incapacitated person, for whom a conservator has previously been appointed and is serving, only may be effected by the conservator for such minor or incapacitated person.</u></p> <p><u>(2) The settlement of any claim that does not exceed ten thousand dollars in favor of or against any minor or incapacitated person shall be effected by the conservator for the minor or incapacitated person or, if no conservator has previously been appointed, may be effected by: (i) the parent or guardian of the minor, (ii) a guardian appointed under Part 3 of this article for an incapacitated person, or (iii) a guardian ad litem appointed by the court for the minor or incapacitated person. The settlement of the claim may be effected without court approval and without the subsequent appointment of a conservator for the minor or incapacitated person. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the payment or delivery must be made to a conservator previously appointed for the minor or incapacitated person or, if no conservator has been previously appointed, shall be made in accordance with Section 62-5-103, in which case the person receiving the money or personal property on behalf of the minor or incapacitated person shall be authorized to execute a proper receipt and release or covenant not to sue therefor, which shall be binding upon the minor or incapacitated person.</u></p> <p><u>(3) The settlement of any claim exceeding ten thousand dollars in favor of or against a minor or incapacitated person requires the appointment of a conservator for the minor or incapacitated person unless one has been previously appointed and is serving. If a conservator concludes that settlement of the claim exceeding ten thousand dollars in favor of or against his ward is in the best interest of the ward he may enter into the settlement as follows:</u></p> <p><u>(a) subject to limitations placed upon a conservator by the appointing court, if the claim is twenty-five thousand dollars or less, the conservator may settle the claim without court authorization or</u></p>

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<p>or the delivery of personal property for the benefit of the minor or incapacitated person, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person.</p> <p>(2) If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62-5-103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62-5-103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.</p> <p>(D) The settlement of any claim that does not exceed two thousand five hundred dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated person without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62-5-103.</p>	<p><u>confirmation, or the conservator may file with the court an application or motion for approval as provided item (4). If the settlement requires an application the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which shall be binding upon the minor or incapacitated person.</u></p> <p><u>(4) Settlement of a claim with a value exceeding twenty-five thousand dollars requires court approval which the conservator may attain only as follows:</u></p> <p><u>(a) The conservator must file with the court an application or motion setting forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, if any, and the reasons why, in the opinion of the conservator, the proposed settlement is fair and reasonable and should be approved by the court. The application or motion must include a statement by the conservator that, in his opinion, the proposed settlement is in the best interests of the minor or incapacitated person. Notice of hearing must be given to the minor or incapacitated person’s guardian, the spouse, any adult children whose whereabouts are known or reasonably ascertainable, and if there is no spouse or adult children, the parents whose whereabouts are known or reasonably ascertainable. The court may approve or deny any application or motion for approval of a settlement filed by the conservator after notice and a hearing, or may in its discretion require the commencement of a formal proceeding under Section 62-5-428.</u></p> <p><u>(b) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the conservator to consummate it and execute a proper receipt and release or covenant not to sue therefor, which shall be binding upon the minor or incapacitated person.</u></p> <p><u>(c) Except as provided in subitem (d), the order authorizing the settlement must require that payment or delivery of the money or</u></p>

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	<p><u>personal property to or in favor of a minor or incapacitated person be paid to the conservator for the benefit of the minor or incapacitated person.</u></p> <p><u>(d) If based upon the facts set forth in the application or motion or presented during the hearing, the probate court finds it is in the best interest of the minor or incapacitated person, the court may order any settlement proceeds placed in a special needs trust which complies with the provisions of 42 U.S.C. 1396p(d)(4)(A) or in a pooled fund trust which complies with the provisions of 42 USC 1396p(d)(4)(C).</u></p> <p><u>(e) If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, the party may be found to be liable and punishable for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.</u></p> <p>REPORTER’S COMMENTS</p> <p>As revised by the 2012 amendment, this section was formerly Section 62-5-433 which has been substantially modified. It addresses The settlement of claims in favor of or against a minor or incapacitated person.</p> <p>Item (A) contains definitions applicable to this section.</p> <p>Item (B)(1) states that if a conservatorship is in place, only the conservator may settle the claim.</p> <p>Item (B)(2) addresses claims not in excess of \$10,000.00. Such claims may be settled by a conservator. If no conservator has been appointed, the claim may be settled by the parent, guardian or guardian ad litem of a minor or by a guardian for an incapacitated person without court approval and without appointment of a conservator. If there is a conservator, any funds or property would be delivered to the conservator. If there is no conservator, funds or property could be delivered in accordance with 62-5-103.</p> <p>Item (B)(3) addresses claims over \$10,000.00 and requires the appointment of a conservator to effect the settlement.</p>

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	<p>Item (B)(4) states that for claims of \$25,000.00 or less, the conservator, unless his authority has been limited by the court, may settle the claim without court approval or may file an application or motion for approval. For claims in excess of \$25,000.00, the conservator must file an application or motion for approval.</p> <p>SECTION 62-5-433.</p> <p>(A)(1) For purposes of this section and for any claim exceeding twenty five thousand dollars in favor of or against any minor or incapacitated person, ‘court’ means the circuit court of the county in which the minor or incapacitated person resides or the circuit court in the county in which the suit is pending. For purposes of this section and for any claim not exceeding twenty five thousand dollars in favor of or against any minor or incapacitated person, ‘court’ means either the circuit court or the probate court of the county in which the minor or incapacitated person resides or the circuit court or probate court in the county in which the suit is pending.</p> <p>(2) ‘Claim’ means the net or actual amount accruing to or paid by the minor or incapacitated person as a result of the settlement.</p> <p>(3) ‘Petitioner’ means either a conservator appointed by the probate court for the minor or incapacitated person or the guardian or guardian ad litem of the minor or incapacitated person if a conservator has not been appointed.</p> <p>(B) The settlement of any claim over twenty five thousand dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property must be effected on his behalf in the following manner:</p> <p>(1) The petitioner must file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, if any, and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved. For all claims that exceed twenty five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion,</p>

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	<p>the proposed settlement is in the best interests of the minor or incapacitated person.</p> <p>(2) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, to receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person.</p> <p>(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner shall, upon receiving the money or personal property, pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.</p> <p>(C) The settlement of any claim that does not exceed twenty five thousand dollars in favor of or against a minor or incapacitated person for the payment of money or the possession of personal property may be effected in any of the following manners:</p> <p>(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62-5-424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or</p>

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	<p>incapacitated person.</p> <p>(2) If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62-5-103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62-5-103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.</p> <p>(D) The settlement of any claim that does not exceed two thousand five hundred dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated person without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62-5-103.</p> <p><u>(1) An adult, who is not incapacitated but is disabled, may petition the court to create and establish a special needs trust for his benefit in compliance with 42 USC 1396p(d)(4)(A). Upon the filing of an application together with the written statement of a physician stating that the petitioner is competent to manage his property, the court may issue an order creating and establishing a special needs trust in the form and substance submitted by the petitioner. The court shall have no responsibility to assure the validity of the trust or its effectiveness in accomplishing the intended purpose and shall have no ongoing</u></p>

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	<p><u>responsibility to monitor the trust.</u></p> <p><u>(2) The court shall have authority to create and establish a special needs trust for an incapacitated person in compliance with 42 U.S.C. 1396(d)(4)(A) and to order the placement of the incapacitated person’s funds into such a trust or into a pooled trust in compliance with 42 U.S.C. 1396(d)(4)(C) for the benefit of incapacitated persons under its authority to issue protective orders pursuant to the procedure set forth in Section 62-5-401 et seq.</u></p> <p><u>(3) In the case of a disabled minor primary respondent, the court shall have authority to create and establish a special needs trust in compliance with 42 U.S.C. 1396(d)(4)(A) if the court determines it is in the primary respondent’s best interest. The court also shall have the authority to order the placement of the minor’s funds into such a trust or into a pooled trust in compliance with 42 U.S.C. 1396(d)(4)(C) for the benefit of a minor under its authority to issue protective orders pursuant to the procedure set forth in Section 62-5-401 et seq., even though the terms of the trust extend beyond the age of majority.</u></p> <p style="text-align: center;">REPORTER’S COMMENTS</p> <p>The 2012 amendment added this section.</p> <p>Subsection (1) clarifies that the court has jurisdiction to create a special needs trust for an adult who is disabled, but not incapacitated. The court is authorized to create such a trust in the form submitted by the petitioner and is not responsible for the validity of the trust or for monitoring of the trust.</p> <p>Subsection (2) affirms the court’s authority to create a special needs trust for an incapacitated person and to order the placement of the incapacitated person’s funds into a special needs trust or a pooled trust.</p> <p>Subsection (3) confirms the court’s authority to create a special needs trust for a disabled minor and to order the placement of the disabled minor’s funds into a special needs trust or pooled trust even though the trust extends beyond the age of majority.</p> <p>A special needs trust or pooled trust is appropriate for a minor or adult who meets the disability requirements referenced in 42 U.S.C.</p>

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<p>SECTION 62-5-434. Settlement of claims involving minors completed between July 1, 1987, and September 24, 1987, presumed valid.</p> <p>The settlement of any claim involving a minor completed between July 1, 1987, and September 24, 1987, is presumed facially valid whether effectuated with or without court approval.</p> <p>SECTION 62-5-435. Liability for approving or completing settlement.</p> <p>Neither the court which may have approved a settlement nor a person who completed the settlement of a minor’s claim but did not seek court approval during this time period is liable for their good faith exercise of discretion in approving or completing the settlement.</p> <p>EDITOR’S NOTE The first three sentences of Section 21(A) of 1988 Act No. 659, provide as follows: “Provisions of the South Carolina Probate Code which became effective July 1, 1987, superceded the minor settlement provisions of former Sections 15-71-10 through 15-71-30 of the 1976 Code which had required court approval of the settlement. On September 24, 1987, the South Carolina Supreme Court issued an administrative order reinstating a court approval procedure for the settlement of minor claims. It is the intent of the General Assembly that the settlement of any claim involving a minor completed between July 1, 1987, and September 24, 1987, is presumed facially valid, and the General Assembly has therefore determined to enact the provisions of Section 62-5-434 herein.”</p>	<p>1396P(d)(4).</p> <p>SECTION 62-5-434.</p> <p>The settlement of any claim involving a minor completed between July 1, 1987, and September 24, 1987, is presumed facially valid whether effectuated with or without court approval.</p> <p>SECTION 62-5-435.</p> <p>Neither the court which may have approved a settlement nor a person who completed the settlement of a minor’s claim but did not seek court approval during this time period is liable for their good faith exercise of discretion in approving or completing the settlement.</p>

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Article 5.Part 6. Uniform Veterans’ Guardianship Act	Article 5.Part 6.
<p>SECTION 62-5-601. Short title.</p> <p>This part [Sections 62-5-601 et seq.] may be cited as the “Uniform Veterans’ Guardianship Act”.</p> <p>SECTION 62-5-602. Definitions.</p> <p>As used in this part [Sections 62-5-601 et seq.]:</p> <p>(1) The term “Veterans’ Administration” means the United States Veterans’ Administration or its successor.</p> <p>(2) The terms “estate” and “income” shall include only monies received by the guardian from the Veterans’ Administration and all earnings, interest, and profits derived therefrom.</p> <p>(3) The term “benefits” means all monies payable by the United States through the Veterans’ Administration.</p> <p>(4) The term “Administrator” means the Administrator of Veterans’ Affairs of the United States or his successor.</p> <p>(5) The term “ward” means a beneficiary of the Veterans’ Administration.</p> <p>(6) The term “guardian” means any person acting as a fiduciary for any ward, including a committee for a person over twenty-one years old.</p> <p>SECTION 62-5-603. Appointment of guardians.</p> <p>Whenever, pursuant to any law of the United States or regulation of the Veterans’ Administration, the Administrator requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.</p> <p>SECTION 62-5-604. Persons who may file summons and petition for appointment.</p> <p>A summons and petition for the appointment of a guardian may be filed</p>	<p><u>SEE SECTION 62-5-431 FOR NEW LANGUAGE</u></p> <p>SECTION 62-5-601.</p> <p>This part [Sections 62-5-601 et seq.] may be cited as the ‘Uniform Veterans’ Guardianship Act’.</p> <p>SECTION 62-5-602.</p> <p>As used in this part [Sections 62-5-601 et seq.]:</p> <p>(1) The term ‘Veterans’ Administration’ means the United States Veterans’ Administration or its successor.</p> <p>(2) The terms ‘estate’ and ‘income’ shall include only monies received by the guardian from the Veterans’ Administration and all earnings, interest, and profits derived therefrom.</p> <p>(3) The term ‘benefits’ means all monies payable by the United States through the Veterans’ Administration.</p> <p>(4) The term ‘Administrator’ means the Administrator of Veterans’ Affairs of the United States or his successor.</p> <p>(5) The term ‘ward’ means a beneficiary of the Veterans’ Administration.</p> <p>(6) The term ‘guardian’ means any person acting as a fiduciary for any ward, including a committee for a person over twenty-one years old.</p> <p>SECTION 62-5-603.</p> <p>Whenever, pursuant to any law of the United States or regulation of the Veterans’ Administration, the Administrator requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.</p> <p>SECTION 62-5-604.</p>

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<p>in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a summons and petition within thirty days after the mailing of notice by the Veterans' Administration to the last known address of such person indicating the necessity of such filing, a summons and petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State.</p> <p>SECTION 62-5-605. Contents of petition for appointment of guardian.</p> <p>The petition for such an appointment shall set forth (a) the name, age and place of residence of the ward, (b) the names and places of residence of the nearest relatives, if known, (c) the fact that such ward is entitled to receive monies payable by or through the Veterans' Administration and (d) the amount of monies then due and the amount of probable future payments.</p> <p>The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.</p> <p>In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the Veterans' Administration in accordance with the laws and regulations governing the Veterans' Administration.</p> <p>SECTION 62-5-606. Facts that constitute prima facie evidence of need for guardian of a minor ward.</p>	<p>A summons and petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a summons and petition within thirty days after the mailing of notice by the Veterans' Administration to the last known address of such person indicating the necessity of such filing, a summons and petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State.</p> <p>SOUTH CAROLINA COMMENTS</p> <p>The 2010 amendment revised this section to clarify that a summons and petition are required to commence a formal proceeding, including a proceeding for appointment of a guardian under the Uniform Veteran's Guardianship Act as contained in Part 6. See 2010 amendments to certain definitions in S.C. Code §§62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.</p> <p>SECTION 62-5-605.</p> <p>The petition for such an appointment shall set forth (a) the name, age and place of residence of the ward, (b) the names and places of residence of the nearest relatives, if known, (c) the fact that such ward is entitled to receive monies payable by or through the Veterans' Administration and (d) the amount of monies then due and the amount of probable future payments.</p> <p>The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.</p> <p>In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the Veterans' Administration in accordance with the laws and regulations governing the Veterans' Administration.</p>

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<p>When a petition is filed for the appointment of a guardian of a minor ward a certificate of the Administrator or his representative, setting forth the age of such minor as shown by the records of the Veterans' Administration and the fact that the appointment of a guardian is a condition precedent to the payment of any monies due the minor by the Veterans' Administration, shall be prima facie evidence of the necessity for such an appointment.</p> <p>SECTION 62-5-607. Facts that constitute prima facie evidence of need for guardian of a mentally incompetent ward.</p> <p>When a petition is filed for the appointment of a guardian of a mentally incompetent ward a certificate of the Administrator or his representative, setting forth the fact that such person has been rated incompetent by the Veterans' Administration on examination in accordance with the laws and regulations governing the Veterans' Administration and that the appointment of a guardian is a condition precedent to the payment of any monies due such person by the Veterans' Administration, shall be prima facie evidence of the necessity for such appointment.</p> <p>SECTION 62-5-608. Notice of summons and petition.</p> <p>Upon the filing and service of summons and petition for the appointment of a guardian, under the provisions of this part the court shall cause such notice to be given as is provided by law.</p>	<p>SECTION 62-5-606.</p> <p>When a petition is filed for the appointment of a guardian of a minor ward a certificate of the Administrator or his representative, setting forth the age of such minor as shown by the records of the Veterans' Administration and the fact that the appointment of a guardian is a condition precedent to the payment of any monies due the minor by the Veterans' Administration, shall be prima facie evidence of the necessity for such an appointment.</p> <p>SECTION 62-5-607.</p> <p>When a petition is filed for the appointment of a guardian of a mentally incompetent ward a certificate of the Administrator or his representative, setting forth the fact that such person has been rated incompetent by the Veterans' Administration on examination in accordance with the laws and regulations governing the Veterans' Administration and that the appointment of a guardian is a condition precedent to the payment of any monies due such person by the Veterans' Administration, shall be prima facie evidence of the necessity for such appointment.</p> <p>SECTION 62-5-608.</p> <p>Upon the filing and service of summons and petition for the appointment of a guardian, under the provisions of this part the court shall cause such notice to be given as is provided by law.</p> <p>SOUTH CAROLINA COMMENTS The 2010 amendment revised this section to clarify that a summons and petition are required in a formal proceeding, including a proceeding for</p>

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<p>SECTION 62-5-609. Fitness of guardian; bond.</p> <p>Before making an appointment under the provisions of this part [Sections 62-5-601 et seq.], the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this State. The court may, from time to time, require the guardian to file an additional bond. When a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned by them both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.</p> <p>SECTION 62-5-610. Limitation on number of wards of one guardian.</p> <p>Except as hereinafter provided it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. Upon presentation of a petition by an attorney of the Veterans' Administration under this section alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge as a guardian of any such ward for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in such case. The limitations of this section shall not apply when the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five wards if they are all members of the same family.</p>	<p>appointment of a guardian under the Uniform Veteran's Guardianship Act as contained in Part 6. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRPC.</p> <p>SECTION 62-5-609.</p> <p>Before making an appointment under the provisions of this part [Sections 62-5-601 et seq.], the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this State. The court may, from time to time, require the guardian to file an additional bond.</p> <p>When a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned by them both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.</p> <p>SECTION 62-5-610.</p> <p>Except as hereinafter provided it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. Upon presentation of a petition by an attorney of the Veterans' Administration under this section alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge as a guardian of any such ward for that reason, the court, upon proof substantiating the petition, shall require a final accounting</p>

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<p>SECTION 62-5-611. Annual account of guardians receiving funds from Veterans' Administration.</p> <p>Every guardian who has received or shall receive on account of his ward any monies from the Veterans' Administration, its predecessors or successors, shall file with the court, annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all monies so received by him and of all disbursements thereof and showing the balance thereof in his hands at the date of such account and how such balance is invested.</p> <p>SECTION 62-5-612. Exhibit of securities at time of filing account.</p> <p>Such guardian, at the time of filing his account, shall exhibit all securities or investments shown by the account to have been acquired with funds so received and then on hand and described therein to (a) an officer of the bank or other depository wherein such securities are held for safekeeping, (b) an authorized representative of the corporation which is surety on his bond, (c) the clerk or other officer of a court of record in this State or (d) upon the request of the guardian or other interested party, to any other reputable person designated by the court. The person to whom such assets are so exhibited shall certify in writing that he has examined such securities or investments and identified them as those described in the account; provided, however, if such depository is the guardian, such certifying officer shall be an officer other than the officer verifying the account. Or, in lieu of exhibiting such securities to any of the persons mentioned above, the guardian may exhibit such securities or investments to the court, who shall endorse on the account and copy thereof a certificate that the securities or investments shown therein as on hand were each in fact exhibited to him and that those exhibited to him were the same as those shown in the account. Such certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable,</p>	<p>forthwith from such guardian and shall discharge such guardian in such case.</p> <p>The limitations of this section shall not apply when the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five wards if they are all members of the same family.</p> <p>SECTION 62-5-611.</p> <p>Every guardian who has received or shall receive on account of his ward any monies from the Veterans' Administration, its predecessors or successors, shall file with the court, annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all monies so received by him and of all disbursements thereof and showing the balance thereof in his hands at the date of such account and how such balance is invested.</p> <p>SECTION 62-5-612.</p> <p>Such guardian, at the time of filing his account, shall exhibit all securities or investments shown by the account to have been acquired with funds so received and then on hand and described therein to (a) an officer of the bank or other depository wherein such securities are held for safekeeping, (b) an authorized representative of the corporation which is surety on his bond, (c) the clerk or other officer of a court of record in this State or (d) upon the request of the guardian or other interested party, to any other reputable person designated by the court. The person to whom such assets are so exhibited shall certify in writing that he has examined such securities or investments and identified them as those described in the account; provided, however, if such depository is the guardian, such certifying officer shall be an officer other than the officer verifying the account. Or, in lieu of exhibiting</p>

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<p>showing the amount of the deposit, shall be filed by the guardian with his account.</p> <p>SECTION 62-5-613. Effect of failure to account.</p> <p>If any guardian shall fail to file any account of the monies received by him from the Veterans' Administration on account of his ward within thirty days after such account is required by either the court or the Administration or shall fail to furnish the Veterans' Administration a copy of his accounts as required by this part [Sections 62-5-601 et seq.], such failure shall be grounds for removal.</p> <p>SECTION 62-5-614. Accountability for funds not received from Administration.</p> <p>If the guardian is accountable for property derived from sources other than the Veterans' Administration, he shall be accountable as is or may be required under the applicable law of this State pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the Veterans' Administration.</p> <p>SECTION 62-5-615. Investments that guardians may make.</p> <p>Every guardian shall invest the surplus funds in his ward's estate in such securities, or otherwise, as allowed by law, and in which the guardian shall have no interest, but only upon prior order of the court. Such funds may be invested, without prior court authorization, in direct interest-bearing obligations of this State or of the United States and in obligations the interest and principal of which are both unconditionally guaranteed by the United States Government.</p> <p>SECTION 62-5-616. Use of estate for support of persons other than ward.</p>	<p>such securities to any of the persons mentioned above, the guardian may exhibit such securities or investments to the court, who shall endorse on the account and copy thereof a certificate that the securities or investments shown therein as on hand were each in fact exhibited to him and that those exhibited to him were the same as those shown in the account. Such certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount of the deposit, shall be filed by the guardian with his account.</p> <p>SECTION 62-5-613.</p> <p>If any guardian shall fail to file any account of the monies received by him from the Veterans' Administration on account of his ward within thirty days after such account is required by either the court or the Administration or shall fail to furnish the Veterans' Administration a copy of his accounts as required by this part [Sections 62-5-601 et seq.], such failure shall be grounds for removal.</p> <p>SECTION 62-5-614.</p> <p>If the guardian is accountable for property derived from sources other than the Veterans' Administration, he shall be accountable as is or may be required under the applicable law of this State pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the Veterans' Administration.</p> <p>SECTION 62-5-615.</p> <p>Every guardian shall invest the surplus funds in his ward's estate in such securities, or otherwise, as allowed by law, and in which the guardian shall have no interest, but only upon prior order of the court. Such funds may be invested, without prior court authorization, in direct</p>

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<p>A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the Veterans' Administration in the manner provided in Sections 62-5-622 and 62-5-623.</p> <p>SECTION 62-5-617. Copies of public records shall be furnished without charge.</p> <p>Whenever a copy of any public record is required by the Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by the Administration, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of the Veterans' Administration with a certified copy of such record.</p> <p>SECTION 62-5-618. Compensation of guardians.</p> <p>Compensation payable to guardians shall not exceed five per cent of the income of the ward during any year. If extraordinary services are rendered by any such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the Veterans' Administration in the manner provided in Sections 62-5-622 and 62-5-623. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.</p> <p>SECTION 62-5-619. Final discharge of guardian; paying out funds less than one thousand dollars.</p>	<p>interest bearing obligations of this State or of the United States and in obligations the interest and principal of which are both unconditionally guaranteed by the United States Government.</p> <p>SECTION 62-5-616.</p> <p>A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the Veterans' Administration in the manner provided in Sections 62-5-622 and 62-5-623.</p> <p>SECTION 62-5-617.</p> <p>Whenever a copy of any public record is required by the Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by the Administration, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of the Veterans' Administration with a certified copy of such record.</p> <p>SECTION 62-5-618.</p> <p>Compensation payable to guardians shall not exceed five per cent of the income of the ward during any year. If extraordinary services are rendered by any such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the Veterans' Administration in the manner provided in Sections 62-5-622 and 62-5-623. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his</p>

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<p>When a minor ward for whom a guardian has been appointed under the provisions of this chapter or other laws of this State has attained his majority and, if incompetent, is declared competent by the Veterans' Administration and the court and when any incompetent ward, not a minor, is declared competent by the Administration and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.</p> <p>If no further income is anticipated by the guardian and the funds held by the guardian do not exceed one thousand dollars, the guardian may pay such funds to the ward if the ward is eighteen years of age and is competent. If the ward is incompetent, the guardian may pay the sum to his conservator if one has been previously appointed. If no conservator exists, then the guardian shall pay to the father or mother of the ward, if living, or either, and if neither is living then to a duly appointed conservator. When the final disbursement has been made and satisfactorily accounted for, the guardian may then be discharged upon a petition filed for that purpose.</p> <p>SECTION 62-5-620. Proceedings in which administrator shall be a party in interest.</p> <p>The Administrator or his successor is and shall be a party in interest (a) in any proceeding brought under any law of this State for the appointment, confirmation, recognition, or removal of any guardian of a minor, or of a mentally incompetent person, to whom or on whose behalf benefits have been paid or are payable by the Veterans' Administration, its predecessor or successor, (b) in any guardianship proceeding involving such person or his estate, (c) in any suit or other proceeding arising out of the administration of such person's estate or assets and (d) in any proceeding the purpose of which is the removal of the disability of minority or of mental incompetency of such person. In any case or proceeding involving property or funds of such minor or mentally incompetent person not derived from the Veterans' Administration, the Veterans' Administration shall not be a necessary</p>	<p>bond.</p> <p>SECTION 62-5-619.</p> <p>When a minor ward for whom a guardian has been appointed under the provisions of this chapter or other laws of this State has attained his majority and, if incompetent, is declared competent by the Veterans' Administration and the court and when any incompetent ward, not a minor, is declared competent by the Administration and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.</p> <p>If no further income is anticipated by the guardian and the funds held by the guardian do not exceed one thousand dollars, the guardian may pay such funds to the ward if the ward is eighteen years of age and is competent. If the ward is incompetent, the guardian may pay the sum to his conservator if one has been previously appointed. If no conservator exists, then the guardian shall pay to the father or mother of the ward, if living, or either, and if neither is living then to a duly appointed conservator. When the final disbursement has been made and satisfactorily accounted for, the guardian may then be discharged upon a petition filed for that purpose.</p> <p>SECTION 62-5-620.</p> <p>The Administrator or his successor is and shall be a party in interest (a) in any proceeding brought under any law of this State for the appointment, confirmation, recognition, or removal of any guardian of a minor, or of a mentally incompetent person, to whom or on whose behalf benefits have been paid or are payable by the Veterans' Administration, its predecessor or successor, (b) in any guardianship proceeding involving such person or his estate, (c) in any suit or other proceeding arising out of the administration of such person's estate or assets and (d) in any proceeding the purpose of which is the removal of</p>

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<p>party but may be a proper party to such proceedings. This section shall not apply unless the Veterans' Administration shall designate in writing filed with the Secretary of State, its chief attorney, acting chief attorney or other agent within this State as a person authorized to accept service of process or upon whom process may be served.</p> <p>SECTION 62-5-621. Copies of accounts, certificates, or pleadings shall be sent to Veterans' Administration.</p> <p>A certified copy of each of the accounts filed pursuant to Section 62-5-611 and a signed duplicate of each of the certificates filed with the court shall be sent by the guardian to the office of the Veterans' Administration having jurisdiction over the area in which such court is located. A duplicate signed copy or certified copy of any petition, motion, or other pleading which is filed in the guardianship proceeding or in any proceeding for the purpose of removing the disability of minority or of mental incapacity shall be furnished by the person filing the same to the office of the Veterans' Administration concerned.</p> <p>SECTION 62-5-622. Time, place, and notice of hearing on account, petition, or other pleading.</p> <p>The court, unless hearing be waived in writing by an attorney of the Veterans' Administration, shall fix a time and place for the hearing on such account, petition, or other pleading not less than fifteen days nor more than thirty days from the date of filing the same, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of such hearing shall be given to the aforesaid Veterans' Administration office not less than fifteen days prior to the date fixed for the hearing. Such notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to such date.</p>	<p>the disability of minority or of mental incompetency of such person. In any case or proceeding involving property or funds of such minor or mentally incompetent person not derived from the Veterans' Administration, the Veterans' Administration shall not be a necessary party but may be a proper party to such proceedings. This section shall not apply unless the Veterans' Administration shall designate in writing filed with the Secretary of State, its chief attorney, acting chief attorney or other agent within this State as a person authorized to accept service of process or upon whom process may be served.</p> <p>SECTION 62-5-621.</p> <p>A certified copy of each of the accounts filed pursuant to Section 62-5-611 and a signed duplicate of each of the certificates filed with the court shall be sent by the guardian to the office of the Veterans' Administration having jurisdiction over the area in which such court is located. A duplicate signed copy or certified copy of any petition, motion, or other pleading which is filed in the guardianship proceeding or in any proceeding for the purpose of removing the disability of minority or of mental incapacity shall be furnished by the person filing the same to the office of the Veterans' Administration concerned.</p> <p>SECTION 62-5-622.</p> <p>The court, unless hearing be waived in writing by an attorney of the Veterans' Administration, shall fix a time and place for the hearing on such account, petition, or other pleading not less than fifteen days nor more than thirty days from the date of filing the same, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of such hearing shall be given to the aforesaid Veterans' Administration office not less than fifteen days prior to the date fixed for the hearing. Such notice may be given by</p>

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<p>SECTION 62-5-623. Notice of hearings shall be given to guardian; orders.</p> <p>Notice of such hearing shall in like manner be given to the guardian and to any other person entitled to notice. The court, or clerk thereof, shall mail to the Veterans' Administration office a copy of each order entered in any guardianship proceeding wherein the Veterans' Administration is an interested party.</p> <p>SECTION 62-5-624. Construction.</p> <p>This part shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Veterans' Administration. This part shall also be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation.</p>	<p>mail, in which event it shall be deposited in the mails not less than fifteen days prior to such date.</p> <p>SECTION 62-5-623.</p> <p>Notice of such hearing shall in like manner be given to the guardian and to any other person entitled to notice. The court, or clerk thereof, shall mail to the Veterans' Administration office a copy of each order entered in any guardianship proceeding wherein the Veterans' Administration is an interested party.</p> <p>SECTION 62-5-624.</p> <p>This part shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Veterans' Administration. This part shall also be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation.</p> <p><u>RESERVED.</u></p>