~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 30, 2022

**H. 5113**

Introduced by Rep. W. Cox

S. Printed 3/30/22--H.

Read the first time March 10, 2022.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 5113) to amend Section 62‑5‑101, Code of Laws of South Carolina, 1976, relating to definitions applicable to Article 5, Title 62, so as to revise, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

CHRIS MURPHY for Committee.

**A** **BILL**

TO AMEND SECTION 62‑5‑101, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS APPLICABLE TO ARTICLE 5, TITLE 62, SO AS TO REVISE THE DEFINITION OF “SUPPORTS AND ASSISTANCE”; TO AMEND SECTION 62‑5‑103, RELATING TO FACILITY OF PAYMENT OR DELIVERY, SO AS TO CLARIFY THE NATURE OF THE FIFTEEN THOUSAND DOLLAR THRESHOLD; TO AMEND SECTION 62‑5‑106, RELATING TO THE DUTIES OF GUARDIANS AD LITEM, SO AS TO PROVIDE THAT THE GUARDIAN AD LITEM MUST SUBMIT HIS REPORT TO THE COURT AT LEAST SEVENTY‑TWO HOURS PRIOR TO THE HEARING; TO AMEND SECTION 62‑5‑108, RELATING TO EMERGENCY AND TEMPORARY ORDERS AND HEARINGS, SO AS TO CLARIFY CERTAIN ASPECTS OF THE PROCESS; TO AMEND SECTIONS 62‑5‑303, 62‑5‑303A, 62‑5‑303B, 62‑5‑303C, AND 62‑5‑303D, ALL RELATING TO THE PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN, SO AS TO CLARIFY CERTAIN ASPECTS OF THE PROCESS; TO AMEND SECTION 62‑5‑307, RELATING TO INFORMAL REQUESTS FOR RELIEF, SO AS TO CLARIFY THE WARD’S ABILITY TO SUBMIT CERTAIN REQUESTS TO THE COURT; TO AMEND SECTION 62‑5‑401, RELATING TO THE VENUE FOR CERTAIN PROCEEDINGS, SO AS TO CLARIFY, AMONG OTHER THINGS, THAT, IN THE CASE OF MINOR CONSERVATORSHIPS, PROPER VENUE IS THE COUNTY IN WHICH THE MINOR RESIDES OR OWNS PROPERTY; TO AMEND SECTION 62‑5‑403A, RELATING TO THE SERVICE OF SUMMONS AND PETITION, SO AS TO INCLUDE CERTAIN OTHER AFFIDAVITS AND REPORTS AMONG THOSE THAT MUST BE FILED WITH THE PETITION; TO AMEND SECTION 62‑5‑403B, RELATING TO THE APPOINTMENT OF COUNSEL AND GUARDIAN AD LITEM, SO AS TO ALLOW THE COURT ALSO TO APPOINT NURSE PRACTITIONERS, PHYSICIAN ASSISTANTS, NURSES, AND PSYCHOLOGISTS TO SERVE AS EXAMINERS UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 62‑5‑403C, RELATING TO HEARINGS AND WAIVERS, SO AS TO REVISE, AMONG OTHER THINGS, CERTAIN PROCEDURES IF NO PARTY REQUESTS A HEARING OR IF THE ALLEGED INCAPACITATED INDIVIDUAL WAIVES HIS RIGHT TO A HEARING; TO AMEND SECTION 62‑5‑405, RELATING TO PROTECTIVE ARRANGEMENTS, SO AS TO REVISE CERTAIN ACTS THAT MAY BE PERFORMED BY CONSERVATORS AND SPECIAL CONSERVATORS; TO AMEND SECTION 62‑5‑422, RELATING TO THE POWERS OF CONSERVATORS IN ADMINISTRATION, SO AS TO MAKE CONFORMING CHANGES REGARDING THE PAYMENT OF CERTAIN FEES; TO AMEND SECTION 62‑5‑426, RELATING TO CLAIMS AGAINST PROTECTED PERSONS, SO AS TO REQUIRE, AMONG OTHER THINGS, THAT THE CLAIMANT ALSO MUST FILE A WRITTEN STATEMENT OF THE CLAIM WITH THE PROBATE COURT IN WHICH THE CONSERVATORSHIP IS UNDER ADMINISTRATION; TO AMEND SECTION 62‑5‑428, RELATING TO ACTIONS FOR REQUESTS SUBSEQUENT TO APPOINTMENT, SO AS TO REVISE CERTAIN ACTIONS THAT THE COURT MAY TAKE AFTER THE TIME FOR RESPONSE TO THE PETITION HAS ELAPSED TO ALL PARTIES SERVED; TO AMEND SECTION 62‑5‑433, RELATING TO DEFINITIONS AND PROCEDURES FOR SETTLEMENT OF CLAIMS IN FAVOR OF OR AGAINST MINORS OR INCAPACITATED PERSONS, SO AS TO, AMONG OTHER THINGS, DEFINE “GUARDIAN AD LITEM”; TO AMEND SECTION 62‑5‑715, RELATING TO CONFIRMATIONS OF GUARDIANSHIPS OR CONSERVATORSHIPS TRANSFERRED FROM OTHER STATES, SO AS TO ALLOW THE COURT MORE DISCRETION AS TO THE TYPE OF DOCUMENTS IT MAY REQUIRE IN THE TRANSFER OF A GUARDIANSHIP OR CONSERVATORSHIPS FROM ANOTHER JURISDICTION; AND TO AMEND SECTION 62‑5‑716, RELATING TO THE REGISTRATION OF ORDERS FROM ANOTHER STATE, SO AS TO, AMONG OTHER THINGS, ACKNOWLEDGE THAT IN CERTAIN OTHER JURISDICTIONS, A GUARDIAN MAY ALSO HOLD THE SAME POWERS AS A CONSERVATOR.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑5‑101(23) of the 1976 Code is amended to read:

“(23) ‘Supports and assistance’ includes:

(a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf, including, but not limited to, having an agent under a durable power of attorney, ~~a health care power of attorney~~ an Advanced Directive and Appointment of Health Care Agent, a trustee under a trust, a representative payee to manage social security funds, ~~a Declaration of Desire for Natural Death (living will),~~ a designated health care decision maker under Section 44‑66‑30, or an educational representative designated under Section 59‑33‑310 to Section 59‑33‑370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision‑maker, including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.”

SECTION 2. Section 62‑5‑103 of the 1976 Code is amended to read:

“Section 62‑5‑103. (A) A person under a duty to pay or deliver money or personal property to a minor or incapacitated individual may perform this duty in amounts not exceeding a net aggregate amount of fifteen thousand dollars each year by paying or delivering the money or property to the conservator for the minor or incapacitated person, if the person under a duty to pay or deliver money or personal property has actual knowledge that a conservator has been appointed or an appointment is pending. If the net aggregate amount to be paid or delivered in a given year exceeds fifteen thousand dollars, a protective proceeding is required. If the person under a duty to pay or deliver money or personal property to a minor or incapacitated person does not have actual knowledge that a conservator has been appointed or that appointment of a conservator is pending, the person may pay or deliver the money or property in amounts not exceeding a net aggregate of fifteen thousand dollars each year to:

(1) a person having the care and custody of the minor or incapacitated individual with whom the minor or incapacitated individual resides;

(2) a guardian of the minor or an incapacitated individual; or

(3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.

(B) The persons, other than a financial institution under subsection (A)(3) above, receiving money or property for a minor or incapacitated individual, serve as fiduciaries subject to fiduciary duties, and are obligated to apply the money for the benefit of the minor or incapacitated individual with due regard to:

(1) the size of the estate, the probable duration of the minority or incapacity, and the likelihood that the minor or incapacitated individual, at some future time, may be able to manage his affairs and his estate;

(2) the accustomed standard of living of the minor or incapacitated individual and members of his household; and

(3) other funds or resources used or available for the support or any obligation to provide support for the minor or incapacitated individual.

(C) The persons may not pay themselves except by way of reimbursement for out‑of‑pocket expenses for goods and services necessary for the minor’s or incapacitated individual’s support. Money or other property received on behalf of a minor or incapacitated individual may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated individual. Excess sums must be preserved for future benefit of the minor or incapacitated individual, and any balance not used and property received for the minor or incapacitated individual must be turned over to the minor when he attains majority or is emancipated by court order; or, to the incapacitated individual when he has been readjudicated as no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of the money or personal property. ~~If the net aggregate amount exceeds fifteen thousand dollars, a conservatorship shall be required.~~

(D) An employer may fulfill his duties to a minor or incapacitated individual by delivering a check to or depositing payment into an account in the name of the minor or incapacitated employee.”

SECTION 3. The first paragraph of Section 62‑5‑106(A)(2) of the 1976 Code is amended to read:

“(2) conducting an independent investigation to determine relevant facts and filing a written report with recommendations ~~at least forty‑eight~~ no later than seventy‑two hours prior to the hearing, unless excused or required earlier by the court. The investigation must include items listed in subitems (a) through (i) and also may include items listed in subitems (j) through (m), as appropriate or as ordered by the court:”

SECTION 4. Section 62‑5‑108 of the 1976 Code is amended to read:

“Section 62‑5‑108. (A) The process for emergency orders without notice~~, emergency hearings, duration, and security~~ is as follows:

(1) Emergency orders without notice must not be issued unless the moving party files a summons, verified petition, notice of and motion for emergency ~~order~~ relief and hearing with any available supporting affidavit(s), ~~verified pleading, notice of emergency hearing,~~ and any other document required by the court. The verified ~~pleading, motions~~ petition, motion, and affidavits shall set forth specific facts supporting the allegation that an immediate and irreparable injury, loss, or damage will result before notice can be served on adverse parties and a hearing held pursuant to subsection (B).

(a) If emergency relief is ~~required to protect the welfare of an alleged incapacitated individual~~ requested, the moving party must present evidence of the emergency and of the individual’s incapacity to the court’s satisfaction including, but not limited to, an affidavit from a physician or nurse practitioner, (or, at the discretion of the court, a physician assistant, nurse, or psychologist), who has performed an examination within thirty days prior to the filing of the action~~,~~. Additionally, the moving party shall file a motion for the appointment of counsel if counsel has not been retained for an alleged incapacitated individual, and a motion for the appointment of a ~~proposed qualified individual to serve as~~ guardian ad litem.

(b) If the emergency relief requested is an order for:

(i) appointment of a temporary guardian, conservator, guardian ad litem, or other fiduciary; or

(ii) the removal of an existing guardian, conservator, or other fiduciary, and the appointment of a substitute, then the moving party must submit evidence of the suitability and creditworthiness of the proposed fiduciary.

(2) If the motion for ~~an~~ emergency ~~order~~ relief is not granted, the moving party may seek temporary relief after notice pursuant to subsection (B) or proceed to a final hearing. The court may, in its discretion, treat a motion for emergency relief as a motion for temporary relief as set forth in subsection (B).

(3) If the motion for an emergency ~~order~~ relief is granted, the date and hour of its issuance must be endorsed on the order. The date and time for the emergency hearing must be entered on the notice of hearing and it must be no later than ten days from the date of the order or as the court determines is reasonable for good cause shown.

(4) The moving party shall serve all pleadings on the alleged incapacitated individual, ward or protected person; counsel for the alleged incapacitated individual, guardian ad litem, and other ~~adverse~~ parties immediately after issuance of the emergency order.

(5) If the moving party does not appear at the emergency hearing, the court may dissolve the emergency order without notice.

(6) Evidence admitted at the hearing may be limited to verified pleadings and any supporting affidavits. Upon good cause shown or at the court’s direction, additional evidence of incapacity and the nature of the emergency may be admitted.

(7) On two days’ notice to the party who obtained the emergency order without notice or on such shorter notice to that party as the court may prescribe, ~~the~~ an adverse party may appear and move for the emergency order’s dissolution or modification, and in that event, the court shall proceed to hear and determine the motion as expeditiously as possible and may consolidate motions.

(8) No emergency order for conservatorship must be issued except upon the court receiving adequate assurances the assets will be protected, which may include providing of security by the moving party in a sum the court deems proper for costs and damages incurred by any party who without just cause is aggrieved as a result of the emergency order. A surety upon a bond or undertaking submits to the jurisdiction of the court.

(9) The court may take whatever actions it deems necessary to protect assets, including, but not limited to, issuing an order to freeze accounts.

(10) Upon the hearing on the ex parte order, if the court continues its prior emergency order, the order must be for a duration of no more than six months unless otherwise specified in an order. A hearing held for the purpose of the issuance of a final order shall be de novo as to all issues.

(11) In an emergency, the court may exercise the power of a guardian with or without notice if the court makes emergency findings as required by the Adult Health Care Consent Act, Section 44‑66‑30.

(B) The process for temporary orders and temporary hearings with notice is as follows:

(1) A temporary order must not be issued without ~~notice to the adverse party~~ proof of service on and notice of hearing to the alleged incapacitated individual, ward, or protected person; counsel for the alleged incapacitated individual; the guardian ad litem; and other parties.

(2) ~~An order for~~ A temporary hearing ~~must not~~ may be ~~issued unless~~ scheduled upon the ~~moving party files a~~ filing of the summons, motion for temporary hearing with any supporting affidavits, ~~and~~ a verified petition ~~or other appropriate pleading setting forth specific facts supporting the allegation that immediate relief is needed during the pendency of the action, and an affidavit of service of the notice of the~~, and motions for the appointment of counsel and guardian ad litem if none have been previously appointed or retained. The temporary hearing ~~to adverse parties~~ may not be held fewer than ten days from service on all interested parties or as the court determines is reasonable.

(a) If temporary relief is ~~required to protect the welfare of an alleged incapacitated individual, in addition to the requirements set forth above in subsection (B)(2),~~ requested, the moving party shall present evidence of the need for temporary relief and of incapacity, including without limitation, an affidavit from a physician or nurse practitioner, (or, at the discretion of the court, a physician assistant, nurse, or psychologist), who has performed an examination within the previous forty‑five days ~~prior to the filing of the action, a motion for the appointment of counsel if counsel has not been retained, and a motion for appointment of a proposed qualified individual to serve as guardian ad litem~~.

(b) If the temporary relief requested is an order for:

(i) appointment of a temporary guardian, conservator, guardian ad litem, or other fiduciary; or

(ii) removal of an existing guardian, conservator or other fiduciary, and the appointment of a substitute, in addition to the requirements set forth in subsection (B)(2) and (a), as applicable, the moving party shall submit evidence of the suitability and creditworthiness of the proposed fiduciary.

(3) If the motion for temporary relief is not granted, the action will remain on the court docket for a ~~final~~ de novo hearing on the underlying petition.

(4) If the court determines that the motion for temporary relief ~~is granted~~ should be set for a hearing, the court shall enter a date and time for the temporary hearing on the notice of hearing.

(5) ~~The moving party shall serve pleadings on the alleged incapacitated individual, ward or protected person, and other adverse parties. Service must be made no later than ten days prior to the temporary hearing or as the court determines is reasonable for good cause shown.~~

~~(6)~~ Temporary orders resulting from the hearing shall expire six months from the date of issuance unless otherwise specified in ~~the~~ an order.

(C) ~~In an emergency, the court may exercise the power of a guardian with or without notice if the court makes emergency findings as required by the Adult Health Care Consent Act, Section 44‑66‑30.~~

~~(D)~~ After preliminary hearing upon such notice as the court deems reasonable, and if the petition requests temporary relief, the court has the power to preserve and apply the property of the alleged incapacitated individual as may be required for his benefit or the benefit of his dependents. Notice of the court’s actions shall be given to interested parties as soon thereafter as possible.

~~(E)~~(D) A hearing concerning the need for a protective order or the appointment of a permanent guardian or conservator must be a hearing de novo as to all issues before the court.”

SECTION 5. Section 62‑5‑303(A) of the 1976 Code is amended to read:

“(A) A person seeking a finding of incapacity, appointment of a guardian, or both, ~~must~~ shall file a summons and petition. When more than one petition is pending in the same court, the proceedings may be consolidated.”

SECTION 6. Section 62‑5‑303A(A) of the 1976 Code is amended to read:

“(A) As soon as reasonably possible after the filing of the summons and petition, the petitioner shall serve:

(1) a copy of the summons, petition, and a notice of right to counsel upon the alleged incapacitated individual and any other documents required if filing an emergency or temporary action;

(2) a copy of the summons and petition upon all ~~correspondents~~ co‑respondents and the petitioner in any pending guardianship proceeding; and

(3) any affidavits or physician’s or nurse practitioner’s reports (or, at the discretion of the court, the report of a physician assistant, nurse, or psychologist) filed with the petition.”

SECTION 7. Section 62‑5‑303B(A)(2)(b) of the 1976 Code is amended to read:

“(b) one examiner, who must be a physician~~,~~ or nurse practitioner, (or, at the discretion of the court, may be a physician assistant, nurse, or psychologist), to examine the alleged incapacitated individual and file a notarized report setting forth his evaluation of the condition of the alleged incapacitated individual in accordance with the provisions set forth in Section 62‑5‑303D. Unless the guardian ad litem or the alleged incapacitated individual objects, if a physician’s or nurse practitioner’s notarized report (or, at the discretion of the court, the report of a physician assistant, nurse, or psychologist) is filed with the petition and served upon the alleged incapacitated individual and all interested parties with the petition, then the court may appoint such physician or nurse practitioner, (or, at the discretion of the court, such physician assistant, nurse, or psychologist), as the examiner. Upon the court’s own motion or upon request of the initial examiner, the alleged incapacitated individual, or his guardian ad litem, the court may appoint a second examiner, who must be a physician, physician assistant, nurse, nurse practitioner, social worker, or psychologist.”

SECTION 8. Section 62‑5‑303C of the 1976 Code is amended to read:

“Section 62‑5‑303C. (A) As soon as the interests of justice may allow, but after the time for filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition, unless the provisions in subsection (C) apply. The alleged incapacitated individual, all parties, and any person who has filed a demand for notice, shall be given notice of the hearing. The alleged incapacitated individual is entitled to be present at the hearing, to conduct discovery, and to review all evidence bearing upon his condition. The hearing may be closed at the request of the alleged incapacitated individual or his guardian ad litem.

(B) The alleged incapacitated individual may waive notice of a hearing and his presence at the hearing.

(C) If no party has requested a hearing, there is an agreement among all the parties, and the guardian ad litem’s report indicates that a hearing would not further the interests of justice, the alleged incapacitated individual may waive his right to a hearing. If the alleged incapacitated individual is unable to communicate to his guardian ad litem his wishes, interests, or preferences regarding the appointment of a guardian or the petition for appointment is not contested, either the attorney for the alleged incapacitated individual or the guardian ad litem, if the attorney has been relieved, shall be allowed to waive the alleged incapacitated individual’s right to a hearing. If the alleged incapacitated individual, his attorney, or his guardian ad litem waives his right to a hearing, the court may:

(1) require a formal hearing;

(2) require an informal proceeding as the court shall direct; or

(3) proceed without a hearing.

~~(B)~~(D) If no formal hearing is held, the court shall issue a temporary consent order, based upon such terms agreed to by the parties and the guardian ad litem. The order shall be considered to be a temporary order which shall expire in thirty days. A ward, under a temporary consent order, may request a formal hearing at any time during the thirty‑day period after the order is filed. At the end of the thirty‑day period, if the ward, his guardian ad litem, or any other fiduciary empowered to act on the ward’s behalf by law or contract has not requested a formal hearing, the court shall issue an order upon such terms agreed to by the parties and the guardian ad litem, and the consent order shall become the final order of the court. The ward, his guardian, his attorney, his guardian ad litem, or any other fiduciary empowered to act on the ward’s behalf by law or contract also may request any desired corrections or amendments to the order during the thirty‑day period.”

SECTION 9. Section 62‑5‑303D of the 1976 Code is amended to read:

“Section 62‑5‑303D. (A) Each examiner shall complete a notarized report setting forth an evaluation of the condition of the alleged incapacitated individual. The original report must be filed with the court by the court’s deadline, but not less than forty‑eight hours prior to any hearing in which the report is introduced as evidence. For good cause, the court may admit an examiner’s report filed less than forty‑eight hours prior to the hearing. All parties are entitled to review the reports after filing, which must be admissible as evidence. The evaluation shall contain, to the best of the examiner’s knowledge and belief:

(1) a description of the nature and extent of the incapacity, including specific functional impairments;

(2) a diagnosis and assessment of the alleged incapacitated individual’s mental and physical condition, including whether he is taking any medications that may affect his actions;

(3) an evaluation of the alleged incapacitated individual’s ability to exercise the rights set forth in Section 62‑5‑304A;

(4) when consistent with the scope of the examiner’s license, an evaluation of the alleged incapacitated individual’s ability to learn self‑care skills, adaptive behavior, and social skills, and a prognosis for improvement;

(5) the date of all examinations and assessments upon which the report is based;

(6) the identity of the persons with whom the examiner met or consulted regarding the alleged incapacitated individual’s mental or physical condition; and

(7) the signature and designation of the professional license held by the examiner.

(B) Unless otherwise directed by the court, the examiner may rely upon an examination conducted within the ninety‑day period immediately preceding the filing of the petition, or longer at the discretion of the court in extraordinary circumstances. In the absence of bad faith, an examiner appointed by the court pursuant to Section 62‑5‑303B, is immune from civil liability for breach of patient confidentiality made in furtherance of his duties.

(C) For the purposes of this section, at the discretion of the court, the ‘examination’ must be conducted in person or virtually via telemedicine or other appropriate methods.”

SECTION 10. Section 62‑5‑307 of the 1976 Code is amended to read:

“Section 62‑5‑307. (A) The ward or another person interested in his welfare, may make an informal request for relief by submitting a written request to the court. The court may take such action as ~~considered~~ it considers in its sole discretion to be reasonable and appropriate including, but not limited to, limiting or terminating the guardianship ~~to protect the ward~~.

(B) A person making an informal request submits personally to the jurisdiction of the court.”

SECTION 11. Section 62‑5‑401 of the 1976 Code is amended to read:

“Section 62‑5‑401. Subject to the provisions of Section 62‑5‑701, et seq., venue for proceedings under this part is:

(1) in the county where the alleged incapacitated individual or minor child resides; or

(2) if the alleged incapacitated individual or minor child does not reside in this State, in any county in the state where the alleged incapacitated individual or minor child has property or has the right to take legal action.”

SECTION 12. Section 62‑5‑403A(A)(3) of the 1976 Code is amended to read:

“(3) any affidavits or physicians’ or nurse practitioners’ reports, (or, at the discretion of the court, the report of a physician assistant, nurse, or psychologist), filed with the petition.”

SECTION 13. Section 62‑5‑403B of the 1976 Code is amended to read:

“Section 62‑5‑403B. (A) Except in cases governed by Section 62‑5‑431 relating to veterans benefits, upon receipt by the court of proof of service of the summons, petition, and notice of right to counsel upon the alleged incapacitated individual, the court shall:

(1) upon the expiration of fifteen days from the filing of the proof of service on the alleged incapacitated individual, if no notice of appearance has been filed by counsel retained by the alleged incapacitated individual, appoint counsel;

(2) no later than thirty days from the filing of the proof of service on the alleged incapacitated individual, appoint:

(a) a guardian ad litem for the alleged incapacitated individual who has the duties and responsibilities set forth in Section 62‑5‑106;

(b) except in cases governed by Section 62‑5‑431 relating to benefits from the VA, one examiner, who must be a physician, or nurse practitioner, (or, at the discretion of the court, may be a physician assistant, nurse, or psychologist), to examine the alleged incapacitated individual and file a notarized report setting forth his evaluation of the condition of the alleged incapacitated individual in accordance with the provisions set forth in Section 62‑5‑403D. Unless the guardian ad litem or the alleged incapacitated individual objects, if a physician’s or nurse practitioner’s notarized report, (or, at the discretion of the court, the report of a physician assistant, nurse, or psychologist), is filed with the petition and served upon the alleged incapacitated individual and all interested parties with the petition, then the court may appoint that physician or nurse practitioner, (or, at the discretion of the court, the physician assistant, nurse, or psychologist), as the examiner. Upon the court’s own motion or upon request of the initial examiner, the alleged incapacitated individual, or his guardian ad litem, the court may appoint a second examiner, who must be a physician, physician assistant, nurse practitioner, nurse, social worker, or psychologist. No appointment of examiners is required when the basis for the petition is that the individual is confined, detained, or missing.

(B) At any time during the proceeding, if requested by a guardian ad litem who is not an attorney, the court may appoint counsel for the guardian ad litem.

(C) At the attorney’s discretion, the attorney for the alleged incapacitated individual may file a motion requesting that the court relieve him as the attorney if the alleged incapacitated individual is incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding the appointment in a protective proceeding. The attorney must file an affidavit in support of the motion. If the court is satisfied that the alleged incapacitated individual is incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding the appointment in a protective proceeding, then the court may relieve the attorney from his duties as attorney for the alleged incapacitated individual. If the former attorney requests to be appointed as the guardian ad litem, the court may appoint him to serve as the guardian ad litem. An attorney cannot serve as both an attorney and as a guardian ad litem in a protective proceeding.”

SECTION 14. Section 62‑5‑403C of the 1976 Code is amended to read:

“Section 62‑5‑403C. (A) As soon as the interests of justice may allow, but after the time for filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition, unless the provisions in subsection (C) apply. The alleged incapacitated individual, all parties, and any person who has filed a ~~request or~~ demand for notice ~~must~~ shall be given notice of the hearing. The alleged incapacitated individual is entitled to be present at the hearing, to conduct discovery, and to review all evidence bearing upon his condition. The hearing may be closed at the request of the alleged incapacitated individual or his guardian ad litem.

(B) The alleged incapacitated individual may waive notice of a hearing and his presence at the hearing.

(C) If no party has requested a hearing, there is an agreement among all the parties and the guardian ad litem’s report indicates that a hearing would not further the interests of justice, the alleged incapacitated individual may waive his right to a hearing. If the alleged incapacitated individual is unable to communicate to his guardian ad litem his wishes, interests, or preferences regarding the appointment of a guardian or the petition for appointment is not contested, either the attorney for the alleged incapacitated individual or the guardian ad litem, if the attorney has been relieved, shall be allowed to waive the alleged incapacitated individual’s right to a hearing. If the alleged incapacitated individual waives his right to a hearing, the court may:

(1) require a formal hearing;

(2) require an informal proceeding as the court shall direct; or

(3) proceed without a hearing.

~~(B)~~(D) If no formal hearing is held, the court shall issue a temporary consent order, based upon such terms agreed to by the parties and the guardian ad litem. The order shall be considered to be a temporary order which shall expire in thirty days. A protected person~~,~~ under a temporary consent order, may request a formal hearing at any time during the thirty‑day period after the order is filed. At the end of the thirty‑day period, if the protected person, his conservator, his attorney, his guardian ad litem, or any other fiduciary empowered to act on the protected person’s behalf by law or contract has not requested a formal hearing, the court shall issue an order upon such terms agreed to by the parties and the guardian ad litem. The consent order shall become the final order of the court. The protected person, his conservator, his attorney, his guardian ad litem, or any other fiduciary empowered to act on the protected person’s behalf by law or contract also may request any desired corrections or amendments to the order during the thirty‑day period.”

SECTION 15. Section 62‑5‑405(A) of the 1976 Code is amended to read:

“(A) When it is established in a formal proceeding that a basis exists for affecting a protective arrangement that concerns the property and affairs of a minor or an incapacitated individual, the court may:

(1) without appointing a conservator, authorize, direct, or ratify any provision within a protective arrangement that is in the best interest of the minor or incapacitated individual. A protective arrangement includes, but is not limited to, the payment, delivery, deposit, or retention of funds or property; the sale, mortgage, lease, or other transfer of property; the entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or the addition to or establishment of a suitable trust.

(2) authorize a conservator or a special conservator to exercise the power to perform the following acts:

(a) make gifts as the court, in its discretion, believes would be made by the protected person;

(b) convey or release the protected person’s contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy;

(c) create or amend revocable trusts or create irrevocable trusts of property of the protected person’s estate that may extend beyond the protected person’s disability, or life, or the protected person attaining the age of majority, including the creation or funding of a trust for the benefit of a minor, and a special needs trust or a pooled fund trust for disabled individuals;

(d) fund trusts;

(e) exercise the protected person’s right to elect options and change beneficiaries under insurance and annuity policies and to surrender policies for their cash value;

(f) exercise the protected person’s right to an elective share in the estate of a deceased spouse;

(g) renounce any interest by testate or intestate succession or by inter vivos transfer;

(h) ratify any such actions taken on behalf of the protected person.”

SECTION 16. Section 62‑5‑422(B) of the 1976 Code is amended to read:

“(B) A conservator acting reasonably and in the best interest of the protected person to accomplish the purpose for which he was appointed, may file an application with the court pursuant to Section 62‑5‑428(A) requesting authority to:

(1) continue or participate in the operation of any unincorporated business or other enterprise;

(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;

(3) buy and sell an estate asset, including land in this State or in another jurisdiction 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;

(4) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(5) enter into a lease as lessor or lessee, other than a residential lease described in ~~Section 62‑5‑422~~ subsection (A);

(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;

(7) grant an option involving disposition of an estate asset or to take an option for the acquisition of any asset;

(8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;

(9) make charitable gifts pursuant to the protected person’s gifting and estate plan if the estate is sufficient to provide for the health, education, support, and maintenance of the protected person and his dependents;

(10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship;

(11) pay a reasonable fee to the conservator, special conservator, guardian ad litem, attorney, examiner, ~~or~~ physician, physician assistant, nurse, nurse practitioner, or psychologist for services rendered;

(12) adopt an appropriate budget for routine expenditures of the protected person;

(13) reimburse the conservator for monies paid to or on behalf of the protected person;

(14) exercise or release the protected person’s powers as personal representative, custodian for minors, conservator, or donee of a power of appointment; ~~and~~

(15) exercise options to purchase securities or other property; and

(16) establish or fund a special needs trust or other trust.”

SECTION 17. Section 62‑5‑426(A) of the 1976 Code is amended to read:

“(A) The probate court has exclusive jurisdiction over claims against the protected person arising from the internal affairs of the conservatorship which may be commenced in the following manner:

(1) A 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. The claimant also must file a written statement of the claim, in the form prescribed by rule, with the probate court in which the conservatorship is under administration.

(2) A claim is considered presented ~~on~~ upon the ~~receipt~~ filing of the ~~written~~ statement of claim ~~by~~ with the ~~conservator~~ court.

(3) ~~Every claim that 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 no 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.~~ As to claims presented in the manner described in item (1), within sixty days after the presentment of the claim, the conservator must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part. Service of such notice shall be by United States mail, personal service, or otherwise as permitted by rule, and a copy of the notice must be filed with the probate court, along with proof of delivery setting forth the date of mailing or other service on the claimant. A notice of disallowance or partial disallowance of a claim must contain a warning that the claim will be barred to the extent disallowed unless the claimant commences a proceeding for allowance of the claim in accordance with item (4) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance. Every claim which is disallowed in whole or in part by the conservator is barred so far as not allowed unless the claimant commences a proceeding for allowance of the claim in accordance with item (4) no later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the conservator. For good cause shown, the court may reasonably extend the time for filing the notice of allowance or disallowance of a properly filed claim.

(4) Once a claim is presented in accordance with item (1), a claimant may at any time thereafter commence a legal proceeding against the conservator by the filing of a summons and petition for allowance of a claim in the probate court having jurisdiction over the conservatorship, seeking payment of the claim by the conservatorship, and serving the same upon the conservator. Thereafter, the probate court shall not authorize the termination of the conservatorship until the legal proceeding has ended.

(5) In lieu of the procedure provided for in items (1) through (4), a claimant may commence a legal proceeding against the conservator, by the filing of a summons and petition for allowance of a claim or complaint in the probate court having jurisdiction over the conservatorship, seeking payment of his claim by the conservatorship, and serving the same upon the conservator. Thereafter, the probate court may not permit the termination of the conservatorship until the legal proceeding has ended.

(6) Notwithstanding another provision of this section, no proceeding for enforcement or allowance of a claim may be commenced more than thirty days after the conservator has mailed a notice of disallowance or partial disallowance of the claim.

(7) This subsection does not apply to a proceeding by a secured creditor to enforce the secured creditor’s right to its security.”

SECTION 18. Section 62‑5‑428(B)(2)(c) of the 1976 Code is amended to read:

“(c) 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~~ may hold a hearing on the merits of the petition or may follow the procedure for a consent order without a hearing outlined in Section 62‑5‑403C. The protected person and all parties not in default must be given notice of the hearing. If all parties not in default waive a hearing, the court may issue a consent order.”

SECTION 19. Section 62‑5‑433 of the 1976 Code is amended to read:

“Section 62‑5‑433. (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 individual, ‘court’ means the circuit court of the county in which the minor or incapacitated individual 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 individual, ‘court’ means either the circuit court or the probate court of the county in which the minor or incapacitated individual resides or the circuit court or probate court in the county in which the suit is pending.

(2) ‘Claim’ means the net or actual amount accruing to or paid by the minor or incapacitated individual as a result of the settlement.

(3) ‘Petitioner’ means either a conservator appointed by the court for the minor or incapacitated individual or the guardian or guardian ad litem of the minor or incapacitated individual if a conservator has not been appointed.

(4) For the purposes of this section, ‘Guardian ad litem’ means a person who has been appointed by the court as provided in Rule 17, South Carolina Rules of Civil Procedure and not a person appointed pursuant to Section 62‑5‑303B or Section 62‑5‑403B.

(B) The settlement of a claim over twenty‑five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

(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, the proposed settlement is in the best interests of the minor or incapacitated individual.

(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 individual, 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 individual, 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 individual.

(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator or pursuant to a protective order issued by the probate court. If a conservator has not been appointed nor a protective order issued, the petitioner, upon receiving the money or personal property, shall pay and deliver it to the court pending the appointment and qualification of a duly ~~appointed~~ qualified conservator or the issuance of a protective order. 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.

(C) The settlement of a claim that does not exceed twenty‑five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected in any of the following manners:

(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section ~~62‑5‑424~~ 62‑5‑422, 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 individual, 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 individual.

(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 individual 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.

(D) The settlement of a claim that does not exceed two thousand five hundred dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated individual 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 individual, 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 individual. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62‑5‑103.”

SECTION 20. Section 62‑5‑715(A) of the 1976 Code is amended to read:

“(A) To confirm transfer of a guardianship or conservatorship to this State under provisions similar to Section 62‑5‑714, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a ~~certified~~ copy of the other state’s provisional order of transfer and copies of such other documents from the other state’s file as the court in this State shall require, said copies being either certified or exemplified, in the sole discretion of the court.”

SECTION 21. Section 62‑5‑716(B) of the 1976 Code is amended to read:

“(B) If a conservator or a guardian with financial and contractual authority (guardian of the assets) has been appointed in another state and a petition for a protective order is not pending in this State, the conservator or guardian of the assets appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in the Probate Court, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. The court shall treat this as the filing of authenticated or certified records and shall charge the fees set forth in Section 8‑21‑770 for the filing of such documents. The court will then issue a certificate of registration. The conservator or guardian of the assets shall file the certificate, along with a copy of the fiduciary letters in the county real estate records.”

SECTION 22. This act takes effect upon approval by the Governor.

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