



Hennepin County Adult Representation Services

March 19, 2024

The Honorable Tim Walz
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

The Honorable Peggy Flanagan
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

The Honorable Erin Murphy
Senate Majority Leader
95 University Avenue West
Minnesota Senate Building, Room 3211
St. Paul, MN 55155

The Honorable Melissa Hortman
Speaker of the House
463 State Office Building
St. Paul, MN 55155

RE: HF3483/SF3438 – *Urgent Need to Protect Minnesota’s Most Vulnerable*

Dear Governor Walz, Lt. Governor Flanagan, Senator Murphy, and Representative Hortman:

We, the undersigned, respectfully request that the language of the SF3438-A3 amendment pass in the 2024 legislative session to protect Minnesota’s seniors and those under guardianship.

Currently, a guardian is completely immune for virtually all acts of negligence based on a 2022 Minnesota Court of Appeals decision.¹ The facts of the case are egregious, displaying the guardian’s willful misconduct when preventing the family from knowing of a heinous crime suffered by their loved one under guardianship until nine months after her death and thus preventing proper follow-up care for the elderly victim. According to the ruling, a guardian could provide for no food, no care, or neglect the person subject to guardianship leading to death, and still not be civilly liable. This places Minnesota’s 35,000 persons under guardianship at risk of harm.

We agree that the law must change, now, to protect key rights of persons under guardianship and to protect against egregious harm to our most vulnerable.

Immediately after the court’s decision, advocates, guardians, and other stakeholders were convened by Elder Voice Advocates. Based on these conversations and extensive efforts to listen to the concerns of professional guardians, the bill language was developed to strike the

¹ *Zika v. Elder Care of Minnesota, Inc.*, 979 N.W.2d 472 (Minn. App. 2022), rev. granted 11/23/2022; rev. vacated 7/12/2023.

correct balance between protecting vulnerable Minnesotans and ensuring that guardians acting in good faith can perform their duties without concern of liability.

Removal of a guardian would remain the primary response to troubling guardian behavior. Guardians have always been immune from the acts of third parties, which remains the same. In addition, language was added to the bill to allow for resignation of the guardian even if no successor guardian is appointed in certain circumstances, to address concerns expressed by stakeholders.

Minnesota is the only state to grant complete immunity to guardians. We are aware of no other individual or professional aside from a guardian that is afforded complete immunity in Minnesota. Many states provide no immunity to guardians. This bill mirrors other states with narrow and limited civil liability for guardians where harm occurs that is the result of reckless or willful misconduct, or gross negligence.

Please support this urgent need to protect Minnesota's seniors and those under guardianship.

Sincerely,

*AARP
The ARC Minnesota
Elder Voice Advocates/Disability Voice Advocates
Hennepin County Adult Representation Services
Legal Aid, Legal Services Advocacy Project
Minnesota Elder Justice Center
Minnesota Council on Disability
Southeastern Minnesota Center for Independent Living, Inc.*