

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 920

Final Reading

Introduced by Coash, 27; Ashford, 20; Brasch, 16; Davis, 43; Harms, 48; Lathrop, 12; McGill, 26; Schilz, 47; Seiler, 33; Watermeier, 1; Wallman, 30.

Read first time January 15, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to guardianship and conservatorship; to amend
 2 sections 30-2601.01, 30-2627, and 30-2639, Reissue
 3 Revised Statutes of Nebraska, sections 30-2201, 30-2626,
 4 30-2630.01, and 30-2640, Revised Statutes Cumulative
 5 Supplement, 2012, and section 30-2601, Revised Statutes
 6 Supplement, 2013; to adopt the Public Guardianship Act;
 7 to harmonize provisions; to provide an operative date;
 8 and to repeal the original sections.
 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known
2 and may be cited as the Public Guardianship Act.

3 Sec. 2. (1) The Legislature finds that the present system
4 of obtaining a guardian or conservator for an individual, which often
5 depends on volunteers, is inadequate when there is no willing and
6 qualified family member or other person available or willing to serve
7 as guardian or conservator for such individual. The Legislature finds
8 that there is a need to provide guardians and conservators when there
9 is no one suitable or available with priority to serve the needs of
10 such individual. The Legislature intends that establishment of the
11 Office of Public Guardian will provide services for individuals when
12 no private guardian or private conservator is available. The
13 Legislature also finds that alternatives to full guardianship and
14 less intrusive means of intervention should always be explored,
15 including, but not limited to, limited guardianship, temporary
16 guardianship, conservatorship, or the appointment of a payee. It is
17 the intent of the Legislature to provide a public guardian or public
18 conservator only to those individuals whose needs cannot be met
19 through less intrusive means of intervention.

20 (2) The Legislature finds that:

21 (a) All individuals in need of a guardian or conservator
22 shall have the opportunity to have one appointed for them;

23 (b) The priorities for appointment in sections 30-2601 to
24 30-2661 are appropriate in most instances;

25 (c) There are individuals in need of guardians or

1 conservators for whom persons that have priority are unwilling,
2 unable, or inappropriate to become a guardian or conservator;

3 (d) Guardians and conservators under the current system
4 do not always carry out the assigned duties in a way that protects
5 the individual and, in fact, sometimes carry out the duties in a way
6 that abuses or neglects the individual; and

7 (e) For those for whom no person is available for
8 appointment as guardian or conservator, the Office of Public Guardian
9 may provide necessary services.

10 Sec. 3. For purposes of the Public Guardianship Act:

11 (1) Council means the Advisory Council on Public
12 Guardianship;

13 (2) Office means the Office of Public Guardian;

14 (3) Private conservator means an individual or a
15 corporation with general power to serve as trustee who is not with
16 the office and who is appointed by the court to act as conservator
17 for a protected person;

18 (4) Private guardian means any person who is not with the
19 office and who is appointed by the court to act as guardian for a
20 ward;

21 (5) Protected person is as defined in section 30-2601;

22 (6) Public Guardian means the director of the office;

23 (7) Successor conservator means an individual or a
24 corporation with general power to serve as trustee who is recruited
25 by the office to become a conservator for a protected person

1 previously served by the office;

2 (8) Successor guardian means a person or entity who is
3 recruited by the office to become a guardian for a ward previously
4 served by the office; and

5 (9) Ward is as defined in section 30-2601.

6 Sec. 4. The office is created within the judicial branch
7 of government and is directly responsible to the State Court
8 Administrator. The State Court Administrator shall appoint a director
9 of the office who shall be known as the Public Guardian. The Public
10 Guardian shall be hired based on a broad knowledge of human
11 development, intellectual disabilities, sociology, and psychology and
12 shall have business acuity and experience in public education and
13 volunteer recruitment. The Public Guardian shall hire a deputy public
14 guardian and up to twelve associate public guardians who shall serve
15 at the pleasure of the Public Guardian and perform such duties as
16 assigned by the Public Guardian. The Public Guardian shall assume all
17 the duties and responsibilities of a guardian and conservator for any
18 individual appointed to his or her supervision and may designate
19 authority to act on his or her behalf to the deputy public guardian
20 and associate public guardians. The Public Guardian shall administer
21 public guardianship and public conservatorship and shall serve as
22 staff to the council. The Public Guardian may hire support staff as
23 required.

24 Sec. 5. The office:

25 (1) Shall provide immediate response when a guardian or

1 conservator is needed in an emergency situation;

2 (2) Shall provide an option upon the resignation,
3 removal, or discharge of a guardian or conservator so that there is
4 no lapse in service to the ward or protected person;

5 (3) Shall provide equal access and protection for all
6 individuals in need of guardianship or conservatorship services;

7 (4) Shall promote or provide public education to increase
8 the awareness of the duties of guardians and conservators and
9 encourage more people to serve as private guardians or private
10 conservators;

11 (5) Shall recruit members of the general public or family
12 members to serve as guardians or conservators and provide adequate
13 training and support to enhance their success;

14 (6) Shall act as a resource to persons already serving as
15 guardians or conservators for education, information, and support;

16 (7) Shall safeguard the rights of individuals by
17 exploring all options available to support individuals in the least
18 restrictive manner possible and seek full guardianship only as a last
19 resort; and

20 (8) Shall model the highest standard of practice for
21 guardians and conservators to improve the performance of all
22 guardians and conservators in the state.

23 Sec. 6. The Advisory Council on Public Guardianship is
24 created. The council shall be appointed by the State Court
25 Administrator, be comprised of individuals from a variety of

1 disciplines who are knowledgeable in guardianship and
2 conservatorship, and be representative of the geographical and
3 cultural diversity of the state and reflect gender fairness. The
4 council shall consist of the following members: A representative of
5 the Nebraska County Court Judges Association, attorneys licensed to
6 practice law in this state, social workers, mental health
7 professionals, professionals with expertise in the aging population,
8 developmental disability professionals, and other interested groups
9 or individuals.

10 Sec. 7. The State Court Administrator shall appoint
11 initial members of the council for staggered terms of one, two, or
12 three years as designated by the State Court Administrator. All
13 subsequent appointments shall be made for terms of three years. Any
14 vacancy on the council shall be filled in the same manner in which
15 the original appointment was made and for the duration of the term
16 vacated. Appointments of initial members of the council shall be made
17 within ninety days after the operative date of this act. The council
18 shall select a chairperson, a vice-chairperson, and such other
19 officers as it deems necessary.

20 Sec. 8. (1) The council shall advise the Public Guardian
21 on the administration of public guardianship and public
22 conservatorship.

23 (2) The council shall meet at least four times per year
24 and at other times deemed necessary to perform its functions upon the
25 call of the chairperson. Members of the council shall be reimbursed

1 for their actual and necessary expenses as provided in sections
2 81-1174 to 81-1177.

3 Sec. 9. Consistent with the purposes and objectives of
4 the Public Guardianship Act and in consultation with the council, the
5 Public Guardian shall:

6 (1) Develop a uniform system of reporting and collecting
7 statistical data regarding guardianships and conservatorships;

8 (2) Develop and adopt a standard of practice and code of
9 ethics for public guardianship and public conservatorship;

10 (3) Prepare a biennial budget for the implementation of
11 the act;

12 (4) Develop guidelines for a sliding scale of fees to be
13 charged for public guardianship and public conservatorship services;

14 (5) Maintain, in conjunction with private and other
15 public resources, a curricula for training sessions to be made
16 available for successor guardians and successor conservators and
17 private guardians and private conservators;

18 (6) Maintain training programs available statewide to
19 offer the training curricula for interested parties to include:

20 (a) Helping a guardian understand his or her ward's
21 disabilities and a conservator understand his or her fiduciary duties
22 with respect to his or her protected person;

23 (b) Helping a guardian encourage increased independence
24 on the part of his or her ward, as appropriate;

25 (c) Helping a guardian with the preparation and revision

1 of guardianship plans and reports and a conservator with the
2 preparation and revision of accountings; and

3 (d) Advising a guardian or conservator on ways to secure
4 rights, benefits, and services to which his or her ward or protected
5 person is entitled;

6 (7) Promote public awareness of guardianship and
7 conservatorship, the responsibilities attached, and the need for more
8 private guardians and private conservators; and

9 (8) Apply for and receive funds from public and private
10 sources for carrying out the purposes and obligations of the act.

11 Sec. 10. The Supreme Court, upon recommendation by the
12 Public Guardian, in consultation with the council, shall promulgate
13 rules to carry out the Public Guardianship Act.

14 Sec. 11. The Public Guardian shall report to the State
15 Court Administrator as directed by the State Court Administrator. The
16 Public Guardian shall report to the Chief Justice and the Legislature
17 on the implementation of the Public Guardianship Act on or before
18 January 1 of each year. The report to the Legislature shall be made
19 electronically. The report shall include the number and types of
20 guardianships and conservatorships for which the Public Guardian has
21 been appointed, including full guardianships, limited guardianships,
22 and temporary guardianships, the disposition of those appointments,
23 the amount of guardianship and conservatorship fees charged and
24 collected under the act, and the status of the waiting list for
25 public guardianship and public conservatorship services.

1 Sec. 12. A court may order appointment of the Public
2 Guardian as a guardian or conservator only after notice to the Public
3 Guardian and a determination that the appointment or order is
4 necessary and will not result in the Public Guardian having more
5 appointments than permitted by section 15 of this act. The
6 determination of necessity may require the court to ascertain whether
7 there is any other alternative to public guardianship or public
8 conservatorship.

9 Sec. 13. The office shall charge fees pursuant to the
10 guidelines developed pursuant to section 9 of this act unless
11 modified or waived by the court.

12 Sec. 14. (1) Once the Public Guardian is appointed as
13 guardian or conservator, the office shall make a reasonable effort to
14 locate a successor guardian or successor conservator. By June 30 and
15 January 1 of each year, the office shall file an aggregate report
16 with the State Court Administrator describing its efforts to locate a
17 successor guardian or successor conservator.

18 (2) Upon location of a successor guardian or successor
19 conservator, the office shall file a motion with the court for
20 termination or modification of the guardianship or conservatorship.
21 Availability of a successor guardian or successor conservator shall
22 be deemed a change in the suitability of the office for carrying out
23 its powers and duties under section 5 of this act.

24 Sec. 15. The Public Guardian may accept an appointment as
25 a guardian or conservator for an individual not to exceed an average

1 of forty individuals per associate public guardian hired by the
2 office. When the average has been reached, the Public Guardian shall
3 not accept further appointments. The Public Guardian, upon reaching
4 the maximum number of appointments, shall notify the State Court
5 Administrator that the maximum number of appointments has been
6 reached.

7 Sec. 16. (1) When the court appoints the Public Guardian
8 as guardian or conservator for an individual, the Public Guardian
9 immediately succeeds to (a) all powers and duties of a guardian
10 provided in sections 30-2626 and 30-2628, if appointed a guardian, or
11 (b) all powers and duties of a conservator provided in sections
12 30-2646, 30-2647, 30-2653, 30-2654, 30-2655, 30-2656, and 30-2657, if
13 appointed a conservator.

14 (2) The Public Guardian shall:

15 (a) Be considered as an interested party in the welfare
16 of the ward or protected person for purposes of filing a motion for
17 termination or modification of a public guardianship or public
18 conservatorship;

19 (b) Visit the facility in which the ward or protected
20 person is to be placed if it is proposed that the individual be
21 placed outside his or her home; and

22 (c) Monitor the ward or protected person and his or her
23 care and progress on a continuing basis. Monitoring shall, at a
24 minimum, consist of monthly personal contact with the ward or
25 protected person. The Public Guardian shall maintain a written record

1 of each visit with a ward or protected person. The Public Guardian
2 shall maintain periodic contact with all individuals and agencies,
3 public or private, providing care or related services to the ward or
4 protected person.

5 Sec. 17. The Public Guardian may be discharged by a court
6 with respect to any of the authority granted over a ward or protected
7 person upon petition of such individual, any interested party, or the
8 Public Guardian or upon the court's own motion when it appears that
9 the services of the Public Guardian are no longer necessary.

10 Sec. 18. The Public Guardianship Cash Fund is created.
11 The State Court Administrator shall administer the fund. The fund
12 shall consist of money remitted pursuant to the Public Guardianship
13 Act. The fund shall only be used to support the Public Guardianship
14 Act. Any money in the fund available for investment shall be invested
15 by the state investment officer pursuant to the Nebraska Capital
16 Expansion Act and the Nebraska State Funds Investment Act.

17 Sec. 19. Section 30-2201, Revised Statutes Cumulative
18 Supplement, 2012, is amended to read:

19 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,
20 and 30-4001 to 30-4045 and the Public Guardianship Act shall be known
21 and may be cited as the Nebraska Probate Code.

22 Sec. 20. Section 30-2601, Revised Statutes Supplement,
23 2013, is amended to read:

24 30-2601 Unless otherwise apparent from the context, in
25 the Nebraska Probate Code:

1 (1) Incapacitated person means any person who is impaired
2 by reason of mental illness, mental deficiency, physical illness or
3 disability, chronic use of drugs, chronic intoxication, or other
4 cause (except minority) to the extent that the person lacks
5 sufficient understanding or capacity to make or communicate
6 responsible decisions concerning himself or herself;

7 (2) A protective proceeding is a proceeding under the
8 provisions of section 30-2630 to determine that a person cannot
9 effectively manage or apply his or her estate to necessary ends,
10 either because the person lacks the ability or is otherwise
11 inconvenienced, or because the person is a minor, and to secure
12 administration of the person's estate by a conservator or other
13 appropriate relief;

14 (3) A protected person is a minor or other person for
15 whom a conservator has been appointed or other protective order has
16 been made;

17 (4) A ward is a person for whom a guardian has been
18 appointed. A minor ward is a minor for whom a guardian has been
19 appointed solely because of minority;

20 (5) Full guardianship means the guardian has been granted
21 all powers which may be conferred upon a guardian by law;

22 (6) Guardian means any person appointed to protect a ward
23 and may include the Public Guardian;

24 (7) Public Guardian is as defined in section 3 of this
25 act;

1 ~~(6)-(8)~~ Limited guardianship means any guardianship which
2 is not a full guardianship; ~~and~~

3 (9) Conservator means any person appointed to protect a
4 protected person and may include the Public Guardian; and

5 ~~(7)-(10)~~ For purposes of article 26 of the Nebraska
6 Probate Code, interested person means children, spouses, those
7 persons who would be the heirs if the ward or person alleged to be
8 incapacitated died without leaving a valid will who are adults and
9 any trustee of any trust executed by the ward or person alleged to be
10 incapacitated. After the death of a ward, interested person also
11 includes the personal representative of a deceased ward's estate, the
12 deceased ward's heirs in an intestate estate, and the deceased ward's
13 devisees in a testate estate. The meaning of interested person as it
14 relates to particular persons may vary from time to time and must be
15 determined according to the particular purposes of, and matter
16 involved in, any proceeding. If there are no persons identified as
17 interested persons above, then interested person shall also include
18 any person or entity named as a devisee in the most recently executed
19 will of the ward or person alleged to be incapacitated.

20 Sec. 21. Section 30-2601.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 30-2601.01 ~~The State Court Administrator~~ Public Guardian
23 shall approve training curricula for persons appointed as guardians
24 and conservators. Such training curricula shall include, but not be
25 limited to:

1 (1) The rights of wards under sections 30-2601 to 30-2661
2 and the Public Guardianship Act specifically and under the laws of
3 the United States generally;

4 (2) The duties and responsibilities of guardians;

5 (3) Reporting requirements;

6 (4) Least restrictive options in the areas of housing,
7 medical care, and psychiatric care; and

8 (5) Resources to assist guardians in fulfilling their
9 duties.

10 Sec. 22. Section 30-2626, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 30-2626 (a) If a person alleged to be incapacitated has
13 no guardian and an emergency exists, the court may, pending notice
14 and hearing, exercise the power of a guardian or enter an ex parte
15 order appointing a temporary guardian to address the emergency. The
16 order and letters of temporary guardianship shall specify the powers
17 and duties of the temporary guardian limiting the powers and duties
18 to those necessary to address the emergency.

19 (b) When the court takes action to exercise the powers of
20 a guardian or to appoint a temporary guardian under subsection (a) of
21 this section, an expedited hearing shall be held if requested by the
22 person alleged to be incapacitated, or by any interested person, if
23 the request is filed more than ten business days prior to the date
24 set for the hearing on the petition for appointment of the guardian.
25 If an expedited hearing is to be held, the hearing shall be held

1 within ten business days after the request is received. At the
2 hearing on the temporary appointment, the petitioner shall have the
3 burden of showing by a preponderance of the evidence that temporary
4 guardianship continues to be necessary to address the emergency
5 situation. Unless the person alleged to be incapacitated has counsel
6 of his or her own choice, the court may appoint an attorney to
7 represent the person alleged to be incapacitated at the hearing as
8 provided in section 30-2619.

9 (c) If an expedited hearing is requested, notice shall be
10 served as provided in section 30-2625. The notice shall specify that
11 a temporary guardian has been appointed and shall be given at least
12 twenty-four hours prior to the expedited hearing.

13 (d) At the expedited hearing, the court may render a
14 judgment authorizing the temporary guardianship to continue beyond
15 the original ten-day period. The judgment shall prescribe the
16 specific powers and duties of the temporary guardian in the letters
17 of temporary guardianship and shall be effective for a single ninety-
18 day period. For good cause shown, the court may extend the temporary
19 guardianship for successive ninety-day periods.

20 (e) The temporary guardianship shall terminate at the end
21 of the ninety-day period in which the temporary guardianship is valid
22 or at any time prior thereto if the court deems the circumstances
23 leading to the order for temporary guardianship no longer exist or if
24 an order has been entered as a result of a hearing pursuant to
25 section 30-2619 which has been held during the ninety-day period.

1 (f) If the court denies the request for the ex parte
2 order, the court may, in its discretion, enter an order for an
3 expedited hearing pursuant to subsections (b) through (e) of this
4 section.

5 (g) If the petitioner requests the entry of an order of
6 temporary guardianship pursuant to subsection (a) of this section
7 without requesting an ex parte order, the court may hold an expedited
8 hearing pursuant to subsections (b) through (e) of this section.

9 (h) If an appointed guardian is not effectively
10 performing his or her duties and the court further finds that the
11 welfare of the incapacitated person requires immediate action, it
12 may, pending notice and hearing in accordance with section 30-2220,
13 appoint a temporary guardian for the incapacitated person for a
14 specified period not to exceed ninety days. For good cause shown, the
15 court may extend the temporary guardianship for successive ninety-day
16 periods. A temporary guardian appointed pursuant to this subsection
17 has only the powers and duties specified in the previously appointed
18 guardian's letters of guardianship, and the authority of any
19 permanent guardian previously appointed by the court is suspended so
20 long as a temporary guardian has authority.

21 (i) A temporary guardian may be removed at any time. A
22 temporary guardian shall make any report the court requires, except
23 that a temporary guardian shall not be required to provide the check
24 or report under section 30-2602.02. In other respects the provisions
25 of the Nebraska Probate Code concerning guardians apply to temporary

1 guardians.

2 (j) The court may appoint the Public Guardian as the
3 temporary guardian pursuant to the Public Guardianship Act.

4 Sec. 23. Section 30-2627, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 30-2627 (a) Any competent person or a ~~suitable~~
7 ~~institution~~ the Public Guardian may be appointed guardian of a person
8 alleged to be incapacitated, except that it shall be unlawful for any
9 agency providing residential care in an institution or community-
10 based program, or any owner, part owner, manager, administrator,
11 employee, or spouse of an owner, part owner, manager, administrator,
12 or employee of any nursing home, room and board home, assisted-living
13 facility, or institution engaged in the care, treatment, or housing
14 of any person physically or mentally handicapped, infirm, or aged to
15 be appointed guardian of any such person residing, being under care,
16 receiving treatment, or being housed in any such home, facility, or
17 institution within the State of Nebraska. Nothing in this subsection
18 shall prevent the spouse, adult child, parent, or other relative of
19 the person alleged to be incapacitated from being appointed guardian
20 or prevent the guardian officer for one of the Nebraska veterans
21 homes as provided in section 80-327 from being appointed guardian or
22 conservator for the person alleged to be incapacitated. It shall be
23 unlawful for any county attorney or deputy county attorney appointed
24 as guardian for a person alleged to be incapacitated to circumvent
25 his or her duties or the rights of the ward pursuant to the Nebraska

1 Mental Health Commitment Act by consenting to inpatient or outpatient
2 psychiatric treatment over the objection of the ward.

3 (b) Persons who are not disqualified under subsection (a)
4 of this section and who exhibit the ability to exercise the powers to
5 be assigned by the court have priority for appointment as guardian in
6 the following order:

7 (1) A person nominated most recently by one of the
8 following methods:

9 (i) A person nominated by the incapacitated person in a
10 power of attorney or a durable power of attorney;

11 (ii) A person acting under a power of attorney or durable
12 power of attorney; or

13 (iii) A person nominated by an attorney in fact who is
14 given power to nominate in a power of attorney or a durable power of
15 attorney executed by the incapacitated person;

16 (2) The spouse of the incapacitated person;

17 (3) An adult child of the incapacitated person;

18 (4) A parent of the incapacitated person, including a
19 person nominated by will or other writing signed by a deceased
20 parent;

21 (5) Any relative of the incapacitated person with whom he
22 or she has resided for more than six months prior to the filing of
23 the petition;

24 (6) A person nominated by the person who is caring for
25 him or her or paying benefits to him or her; -

1 (7) The Public Guardian.

2 (c) When appointing a guardian, the court shall take into
3 consideration the expressed wishes of the allegedly incapacitated
4 person. The court, acting in the best interest of the incapacitated
5 person, may pass over a person having priority and appoint a person
6 having lower priority or no priority. With respect to persons having
7 equal priority, the court shall select the person it deems best
8 qualified to serve.

9 (d) In its order of appointment, unless waived by the
10 court, the court shall require any person appointed as guardian to
11 successfully complete within three months of such appointment a
12 training program approved by the ~~State Court Administrator.~~ Public
13 Guardian. If the person appointed as guardian does not complete the
14 training program, the court shall issue an order to show cause why
15 such person should not be removed as guardian.

16 (e) The court may require a guardian to furnish a bond in
17 an amount and conditioned in accordance with the provisions of
18 sections 30-2640 and 30-2641. The Public Guardian shall not be
19 required to post bond.

20 Sec. 24. Section 30-2630.01, Revised Statutes Cumulative
21 Supplement, 2012, is amended to read:

22 30-2630.01 (a) If a person alleged to be in need of
23 protection under section 30-2630 has no conservator and an emergency
24 exists, the court may, pending notice and hearing, exercise the power
25 of a conservator or enter an emergency protective order appointing a

1 temporary conservator, who may be the Public Guardian, to address the
2 emergency.

3 (b) When the court takes action to exercise the powers of
4 a conservator or to appoint a temporary conservator under subsection
5 (a) of this section, an expedited hearing shall be held if requested
6 by the person alleged to be in need of protection, or by any
7 interested person, if the request is filed more than ten business
8 days prior to the date set for the hearing on the petition for
9 appointment of the conservator. If an expedited hearing is to be
10 held, the hearing shall be held within ten business days after the
11 request is received. At the hearing on the temporary appointment, the
12 petitioner shall have the burden of showing by a preponderance of the
13 evidence that temporary conservatorship continues to be necessary to
14 address the emergency situation. Unless the person alleged to be in
15 need of protection has counsel of his or her own choice, the court
16 may appoint an attorney to represent the person at the hearing as
17 provided in section 30-2636.

18 (c) If an expedited hearing is requested, notice shall be
19 served as provided in section 30-2634. The notice shall specify that
20 a temporary conservator has been appointed and shall be given at
21 least twenty-four hours prior to the expedited hearing.

22 (d) At the expedited hearing, the court may render a
23 judgment authorizing the temporary conservatorship to continue beyond
24 the original ten-day period. The judgment shall prescribe the
25 specific powers and duties of the temporary conservator in the

1 letters of temporary conservatorship and shall be effective for a
2 ninety-day period. For good cause shown, the court may extend the
3 temporary conservatorship for successive ninety-day periods.

4 (e) The temporary conservatorship shall terminate at the
5 end of the ninety-day period in which the temporary conservatorship
6 is valid or at any time prior thereto if the court deems the
7 circumstances leading to the order for temporary conservatorship no
8 longer exist or if an order has been entered as a result of a hearing
9 pursuant to section 30-2636 which has been held during the ninety-day
10 period.

11 (f) If the court denies the request for the ex parte
12 order, the court may, in its discretion, enter an order for an
13 expedited hearing pursuant to subsections (b) through (e) of this
14 section.

15 (g) If the petitioner requests the entry of an order of
16 temporary conservatorship pursuant to subsection (a) of this section
17 without requesting an ex parte order, the court may hold an expedited
18 hearing pursuant to subsections (b) through (e) of this section.

19 (h) A temporary conservator may be removed at any time. A
20 temporary conservator shall make any report the court requires,
21 except that a temporary conservator shall not be required to provide
22 the national criminal history record check and report under section
23 30-2602.02. In other respects the provisions of the Nebraska Probate
24 Code concerning conservators apply to temporary conservators.

25 Sec. 25. Section 30-2639, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 30-2639 (a) The court may appoint an individual, ~~or~~a
3 corporation with general power to serve as trustee, or the Public
4 Guardian as conservator of the estate of a protected person, except
5 that it shall be unlawful for any agency providing residential care
6 in an institution or community-based program or any owner, part
7 owner, manager, administrator, employee, or spouse of an owner, part
8 owner, manager, administrator, or employee of any nursing home, room
9 and board home, assisted-living facility, or institution engaged in
10 the care, treatment, or housing of any person physically or mentally
11 handicapped, infirm, or aged to be appointed conservator of any such
12 person residing, being under care, receiving treatment, or being
13 housed in any such home, facility, or institution within the State of
14 Nebraska. Nothing in this subsection shall prevent the spouse, adult
15 child, parent, or other relative of the person in need of protection
16 from being appointed conservator.

17 (b) Persons who are not disqualified under subsection (a)
18 of this section and who exhibit the ability to exercise the powers to
19 be assigned by the court have priority for appointment as conservator
20 in the following order:

21 (1) A person nominated most recently by one of the
22 following methods:

23 (i) A person nominated by the protected person in a power
24 of attorney or durable power of attorney;

25 (ii) A person acting under a power of attorney or durable

1 power of attorney; or

2 (iii) A person nominated by an attorney in fact who is
3 given power to nominate in a power of attorney or a durable power of
4 attorney executed by the protected person;

5 (2) A conservator, guardian of property, or other like
6 fiduciary appointed or recognized by the appropriate court of any
7 other jurisdiction in which the protected person resides;

8 (3) An individual or corporation nominated by the
9 protected person if he or she is fourteen or more years of age and
10 has, in the opinion of the court, sufficient mental capacity to make
11 an intelligent choice;

12 (4) The spouse of the protected person;

13 (5) An adult child of the protected person;

14 (6) A parent of the protected person or a person
15 nominated by the will of a deceased parent;

16 (7) Any relative of the protected person with whom he or
17 she has resided for more than six months prior to the filing of the
18 petition;

19 (8) A person nominated by the person who is caring for
20 him or her or paying benefits to him or her; -

21 (9) The Public Guardian.

22 (c) When appointing a conservator, the court shall take
23 into consideration the expressed wishes of the person to be
24 protected. A person having priority listed in subdivision (2), (4),
25 (5), (6), or (7) of subsection (b) of this section may nominate in

1 writing a person to serve in his or her stead. With respect to
2 persons having equal priority, the court shall select the person it
3 deems best qualified of those willing to serve. The court, acting in
4 the best interest of the protected person, may pass over a person
5 having priority and appoint a person having lower priority or no
6 priority.

7 (d) In its order of appointment, unless waived by the
8 court, the court shall require any person appointed as conservator to
9 successfully complete within three months of such appointment a
10 training program approved by the ~~State Court Administrator.~~ Public
11 Guardian. If the person appointed as conservator does not complete
12 the training program, the court shall issue an order to show cause
13 why such person should not be removed as conservator.

14 Sec. 26. Section 30-2640, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 30-2640 For estates with a net value of more than ten
17 thousand dollars, the bond for a conservator shall be in the amount
18 of the aggregate capital value of the personal property of the estate
19 in the conservator's control plus one year's estimated income from
20 all sources minus the value of securities and other assets deposited
21 under arrangements requiring an order of the court for their removal.
22 The bond of the conservator shall be conditioned upon the faithful
23 discharge of all duties of the trust according to law, with sureties
24 as the court shall specify. The court, in lieu of sureties on a bond,
25 may accept other security for the performance of the bond, including

1 a pledge of securities or a mortgage of land owned by the
2 conservator. For good cause shown, the court may eliminate the
3 requirement of a bond or decrease or increase the required amount of
4 any such bond previously furnished. The court shall not require a
5 bond if the protected person executed a written, valid power of
6 attorney that specifically nominates a guardian or conservator and
7 specifically does not require a bond. The court shall consider as one
8 of the factors of good cause, when determining whether a bond should
9 be required and the amount thereof, the protected person's choice of
10 any attorney in fact or alternative attorney in fact. No bond shall
11 be required of any financial institution, as that term is defined in
12 subdivision (12) of section 8-101, or any officer, director,
13 employee, or agent of the financial institution serving as a
14 conservator, or any trust company serving as a conservator. The
15 Public Guardian shall not be required to post bond.

16 Sec. 27. This act becomes operative on January 1, 2015.

17 Sec. 28. Original sections 30-2601.01, 30-2627, and
18 30-2639, Reissue Revised Statutes of Nebraska, sections 30-2201,
19 30-2626, 30-2630.01, and 30-2640, Revised Statutes Cumulative
20 Supplement, 2012, and section 30-2601, Revised Statutes Supplement,
21 2013, are repealed.