

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB43

Hearing Date: Wednesday January 21, 2015
Committee On: Judiciary
Introducer: Coash
One Liner: Provide for standby guardians and recovery of assets under the Nebraska Probate Code

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Krist, Chambers, Coash, Ebke, Morfeld, Pansing Brooks, Seiler, Williams

Nay:

Absent:

Present Not Voting:

Verbal Testimony:

Proponents:

SEN. COLBY COASH
WILLIAM LINDSAY
MICHELLE CHAFFEE

Representing:

INTRODUCER
NEBRASKA STATE BAR ASSOCIATION
OFFICE OF PUBLIC GUARDIAN

Opponents:

Representing:

Neutral:

SUSAN BAZIS

Representing:

GUARDIANSHIP AND CONSERVATORSHIP
COMMISSION AND COUNTY JUDGES ASSOCIATION

Summary of purpose and/or changes:

LB43 would amend the Nebraska Probate Code to allow for the appointment of standby guardians and make changes to certain procedures for the recovery of assets.

Section 2 of LB43 would add subsection (e) to 30-2619 to allow the court to appoint standby guardians to become guardian effective immediately upon the death, unwillingness or inability to act, resignation or removal by the court of the initial guardian. The standby guardian is required to notify the court in writing at the time of assuming office.

Section 3 provides definitions for purposes of the Act of an agent of the ward, conservator or guardian, personal representative and ward.

Under current law, 30-3002 permits a personal representative, heir, devisee, creditor or other interested person to bring a complaint alleging that any person is improperly concealing or taking property, right or claim of a decedent's estate. Section 4 of LB43 would expand 30-3002 to permit a conservator or guardian to bring a similar action on behalf of a ward. This section would also expand the scope of a complaint to permit inquiry into possession of a will of the deceased, power of attorney, advance health care directive, power of attorney for health care decisions executed by the ward or any other information or knowledge withheld from the personal representative, conservator or guardian and needed for the recovery of any property.

Sections 5 and 6 would make non-substantive changes.

Section 7 would permit a conservator or guardian of a ward to bring a complaint against any person entrusted with any part of the ward's estate to account for any money, goods, chattels, bonds, accounts or other papers held in trust. If the person refuses to appear and provide such an account, the court would be authorized to commit the person to the county jail.

Section 8 adds subsection (2) to 30-3005, which would allow the court to appoint a special administrator to represent the estate or the ward when the respondent of a complaint is the personal representative, conservator or guardian.

Explanation of amendments:

AM72 would amend LB43 to clarify the procedure to request the appointment of a standby guardian.

This amendment would also require a standby guardian to comply with any rules promulgated by the Supreme Court before the appointment could become effective and would also require the standby guardian to complete the training required by 30-2601.01.

This amendment would prohibit the appointment of the Public Guardian as a standby guardian.

This amendment would also allow a court to require a current, suspended or former conservator of a ward to appear in court and account for the ward's property. LB43 already allowed a court to require the appearance of an agent of the ward or any person entrusted with any part of the estate.

Les Seiler, Chairperson