

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1089

Introduced by Karpisek, 32.

Read first time January 21, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adult guardianship jurisdiction; to amend
2 sections 30-2603, 30-2607, 30-2610, 30-2611, 30-2616,
3 30-2636, 30-2639, and 30-2647, Reissue Revised Statutes
4 of Nebraska; to adopt the Nebraska Uniform Adult
5 Guardianship and Protective Proceedings Jurisdiction Act;
6 to harmonize provisions; and to repeal the original
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 23 of this act shall be known
2 and may be cited as the Nebraska Uniform Adult Guardianship and
3 Protective Proceedings Jurisdiction Act.

4 Sec. 2. In the Nebraska Uniform Adult Guardianship and
5 Protective Proceedings Jurisdiction Act:

6 (1) Adult means an individual who has attained eighteen
7 years of age;

8 (2) Conservator means a person appointed by the court to
9 administer the property of an adult, including a person appointed
10 under the Nebraska Probate Code for an adult;

11 (3) Guardian means a person appointed by the court to
12 make decisions regarding the person of an adult, including a person
13 appointed under the Nebraska Probate Code for an adult;

14 (4) Guardianship order means an order appointing a
15 guardian;

16 (5) Guardianship proceeding means a judicial proceeding
17 in which an order for the appointment of a guardian is sought or
18 has been issued;

19 (6) Incapacitated person means an adult for whom a
20 guardian has been appointed;

21 (7) Party means the respondent, petitioner, guardian,
22 conservator, or any other person allowed by the court to
23 participate in a guardianship or protective proceeding;

24 (8) Person, except in the term incapacitated person or
25 protected person, means an individual, corporation, business trust,

1 estate, trust, partnership, limited liability company, association,
2 joint venture, public corporation, government or governmental
3 subdivision, agency, or instrumentality, or any other legal or
4 commercial entity;

5 (9) Protected person means an adult for whom a protective
6 order has been issued;

7 (10) Protective order means an order appointing a
8 conservator or other order related to management of an adult's
9 property;

10 (11) Protective proceeding means a judicial proceeding in
11 which a protective order is sought or has been issued;

12 (12) Record means information that is inscribed on a
13 tangible medium or that is stored in an electronic or other medium
14 and is retrievable in perceivable form;

15 (13) Respondent means an adult for whom a protective
16 order or the appointment of a guardian is sought; and

17 (14) State means a state of the United States, the
18 District of Columbia, Puerto Rico, the United States Virgin
19 Islands, a federally recognized Indian tribe, or any territory
20 or insular possession subject to the jurisdiction of the United
21 States.

22 Sec. 3. A court of this state may treat a foreign country
23 as if it were a state for the purpose of applying sections 1 to 17
24 and 21 to 23 of this act.

25 Sec. 4. (1) A court of this state may communicate with

1 a court in another state concerning a proceeding arising under
2 the Nebraska Uniform Adult Guardianship and Protective Proceedings
3 Jurisdiction Act. The court may allow the parties to participate
4 in the communication. Except as otherwise provided in subsection
5 (2) of this section, the court shall make a record of the
6 communication. The record may be limited to the fact that the
7 communication occurred.

8 (2) Courts may communicate concerning schedules,
9 calendars, court records, and other administrative matters without
10 making a record.

11 Sec. 5. (1) In a guardianship or protective proceeding in
12 this state, a court of this state may request the appropriate court
13 of another state to do any of the following:

14 (a) Hold an evidentiary hearing;

15 (b) Order a person in that state to produce evidence or
16 give testimony pursuant to procedures of that state;

17 (c) Order that an evaluation or assessment be made of the
18 respondent;

19 (d) Order any appropriate investigation of a person
20 involved in a proceeding;

21 (e) Forward to the court of this state a certified copy
22 of the transcript or other record of a hearing under subdivision
23 (a) of this subsection or any other proceeding, any evidence
24 otherwise produced under subdivision (b) of this subsection, and
25 any evaluation or assessment prepared in compliance with an order

1 under subdivision (c) or (d) of this subsection;

2 (f) Issue any order necessary to assure the appearance
3 in the proceeding of a person whose presence is necessary for the
4 court to make a determination, including the respondent or the
5 incapacitated or protected person; or

6 (g) Issue an order authorizing the release of medical,
7 financial, criminal, or other relevant information in that state,
8 including protected health information as defined in 45 C.F.R.
9 section 164.504, as the section existed on January 1, 2010.

10 (2) If a court of another state in which a guardianship
11 or protective proceeding is pending requests assistance of the kind
12 provided in subsection (1) of this section, a court of this state
13 has jurisdiction for the limited purpose of granting the request or
14 making reasonable efforts to comply with the request.

15 Sec. 6. (1) In a guardianship or protective proceeding,
16 in addition to other procedures that may be available, testimony
17 of a witness who is located in another state may be offered by
18 deposition or other means allowable in this state for testimony
19 taken in another state. The court on its own motion may order
20 that the testimony of a witness be taken in another state and
21 may prescribe the manner in which and the terms upon which the
22 testimony is to be taken.

23 (2) In a guardianship or protective proceeding, a court
24 in this state may permit a witness located in another state to
25 be deposed or to testify by telephone or audiovisual or other

1 electronic means. A court of this state shall cooperate with the
2 court of the other state in designating an appropriate location for
3 the deposition or testimony.

4 (3) Documentary evidence transmitted from another state
5 to a court of this state by technological means that do not
6 produce an original writing may not be excluded from evidence on an
7 objection based on the best evidence rule.

8 Sec. 7. (1) For purposes of sections 7 to 15 of this act:

9 (a) Emergency means a circumstance that likely will
10 result in substantial harm to a respondent's health, safety, or
11 welfare, and for which the appointment of a guardian is necessary
12 because no other person has authority and is willing to act on the
13 respondent's behalf;

14 (b) Home state means the state in which the respondent
15 was physically present, including any period of temporary absence,
16 for at least six consecutive months immediately before the filing
17 of a petition for a protective order or the appointment of a
18 guardian or, if none, the state in which the respondent was
19 physically present, including any period of temporary absence, for
20 at least six consecutive months ending within the six months prior
21 to the filing of the petition; and

22 (c) Significant-connection state means a state, other
23 than the home state, with which a respondent has a significant
24 connection other than mere physical presence and in which
25 substantial evidence concerning the respondent is available.

1 (2) In determining under section 9 of this act and
2 subsection (5) of section 16 of this act whether a respondent has
3 a significant connection with a particular state, the court shall
4 consider:

5 (a) The location of the respondent's family and other
6 persons required to be notified of the guardianship or protective
7 proceeding;

8 (b) The length of time the respondent at any time was
9 physically present in the state and the duration of any absence;

10 (c) The location of the respondent's property; and

11 (d) The extent to which the respondent has ties to
12 the state such as voting registration, state or local tax
13 return filing, vehicle registration, driver's license, social
14 relationship, and receipt of services.

15 Sec. 8. Sections 7 to 15 of this act provide the
16 exclusive jurisdictional basis for a court of this state to appoint
17 a guardian or issue a protective order for an adult.

18 Sec. 9. A court of this state has jurisdiction to appoint
19 a guardian or issue a protective order for a respondent if:

20 (1) This state is the respondent's home state;

21 (2) On the date the petition is filed, this state is a
22 significant-connection state and:

23 (a) The respondent does not have a home state or a
24 court of the respondent's home state has declined to exercise
25 jurisdiction because this state is a more appropriate forum; or

1 (b) The respondent has a home state, a petition for an
2 appointment or order is not pending in a court of that state or
3 another significant-connection state, and, before the court makes
4 the appointment or issues the order:

5 (i) A petition for an appointment or order is not filed
6 in the respondent's home state;

7 (ii) An objection to the court's jurisdiction is not
8 filed by a person required to be notified of the proceeding; and

9 (iii) The court in this state concludes that it is an
10 appropriate forum under the factors set forth in section 12 of this
11 act;

12 (3) This state does not have jurisdiction under either
13 subdivision (1) or (2) of this section, the respondent's home state
14 and all significant-connection states have declined to exercise
15 jurisdiction because this state is the more appropriate forum, and
16 jurisdiction in this state is consistent with the constitutions of
17 this state and the United States; or

18 (4) The requirements for special jurisdiction under
19 section 10 of this act are met.

20 Sec. 10. (1) A court of this state lacking jurisdiction
21 under section 9 of this act has special jurisdiction to do any of
22 the following:

23 (a) Appoint a guardian in an emergency for a term not
24 exceeding ninety days for a respondent who is physically present in
25 this state;

1 (b) Issue a protective order with respect to real or
2 tangible personal property located in this state; or

3 (c) Appoint a guardian or conservator for an
4 incapacitated or protected person for whom a provisional order to
5 transfer the proceeding from another state has been issued under
6 procedures similar to section 16 of this act.

7 (2) If a petition for the appointment of a guardian in
8 an emergency is brought in this state and this state was not the
9 respondent's home state on the date the petition was filed, the
10 court shall dismiss the proceeding at the request of the court of
11 the home state, if any, whether dismissal is requested before or
12 after the emergency appointment.

13 Sec. 11. Except as otherwise provided in section 10
14 of this act, a court that has appointed a guardian or issued
15 a protective order consistent with the Nebraska Uniform Adult
16 Guardianship and Protective Proceedings Jurisdiction Act has
17 exclusive and continuing jurisdiction over the proceeding until it
18 is terminated by the court or the appointment or order expires by
19 its own terms.

20 Sec. 12. (1) A court of this state having jurisdiction
21 under section 9 of this act to appoint a guardian or issue a
22 protective order may decline to exercise its jurisdiction if it
23 determines at any time that a court of another state is a more
24 appropriate forum.

25 (2) If a court of this state declines to exercise its

1 jurisdiction under subsection (1) of this section, it shall either
2 dismiss or stay the proceeding. The court may impose any condition
3 the court considers just and proper, including the condition that
4 a petition for the appointment of a guardian or issuance of a
5 protective order be filed promptly in another state.

6 (3) In determining whether it is an appropriate forum,
7 the court shall consider all relevant factors, including:

8 (a) Any expressed preference of the respondent;

9 (b) Whether abuse, neglect, or exploitation of the
10 respondent has occurred or is likely to occur and which state
11 could best protect the respondent from the abuse, neglect, or
12 exploitation;

13 (c) The length of time the respondent was physically
14 present in or was a legal resident of this or another state;

15 (d) The distance of the respondent from the court in each
16 state;

17 (e) The financial circumstances of the respondent's
18 estate;

19 (f) The nature and location of the evidence;

20 (g) The ability of the court in each state to decide
21 the issue expeditiously and the procedures necessary to present
22 evidence;

23 (h) The familiarity of the court of each state with the
24 facts and issues in the proceeding; and

25 (i) If an appointment were made, the court's ability to

1 monitor the conduct of the guardian or conservator.

2 Sec. 13. (1) If at any time a court of this state
3 determines that it acquired jurisdiction to appoint a guardian
4 or issue a protective order because of unjustifiable conduct, the
5 court may:

6 (a) Decline to exercise jurisdiction;

7 (b) Exercise jurisdiction for the limited purpose of
8 fashioning an appropriate remedy to ensure the health, safety, and
9 welfare of the respondent or the protection of the respondent's
10 property or prevent a repetition of the unjustifiable conduct,
11 including staying the proceeding until a petition for the
12 appointment of a guardian or issuance of a protective order is
13 filed in a court of another state having jurisdiction; or

14 (c) Continue to exercise jurisdiction after considering:

15 (i) The extent to which the respondent and all persons
16 required to be notified of the proceedings have acquiesced in the
17 exercise of the court's jurisdiction;

18 (ii) Whether it is a more appropriate forum than the
19 court of any other state under the factors set forth in subsection
20 (3) of section 12 of this act; and

21 (iii) Whether the court of any other state would have
22 jurisdiction under factual circumstances in substantial conformity
23 with the jurisdictional standards of section 9 of this act.

24 (2) If a court of this state determines that it acquired
25 jurisdiction to appoint a guardian or issued a protective order

1 because a party seeking to invoke its jurisdiction engaged
2 in unjustifiable conduct, it may assess against that party
3 necessary and reasonable expenses, including attorney's fees,
4 investigative fees, court costs, communication expenses, witness
5 fees and expenses, and travel expenses. The court may not assess
6 fees, costs, or expenses of any kind against this state or a
7 governmental subdivision, agency, or instrumentality of this state
8 unless authorized by law other than the Nebraska Uniform Adult
9 Guardianship and Protective Proceedings Jurisdiction Act.

10 Sec. 14. If a petition for the appointment of a guardian
11 or issuance of a protective order is brought in this state and this
12 state was not the respondent's home state on the date the petition
13 was filed, in addition to complying with the notice requirements of
14 this state, notice of the petition must be given to those persons
15 who would be entitled to notice of the petition if a proceeding
16 were brought in the respondent's home state. The notice must be
17 given in the same manner as notice is required to be given in this
18 state.

19 Sec. 15. Except for a petition for the appointment of a
20 guardian in an emergency or issuance of a protective order limited
21 to property located in this state under subdivision (1)(a) or (b)
22 of section 10 of this act, if a petition for the appointment of a
23 guardian or issuance of a protective order is filed in this state
24 and in another state and neither petition has been dismissed or
25 withdrawn, the following rules apply:

1 (1) If the court in this state has jurisdiction under
2 section 9 of this act, it may proceed with the case unless a court
3 in another state acquires jurisdiction under provisions similar to
4 section 9 of this act before the appointment or issuance of the
5 order; and

6 (2) If the court in this state does not have jurisdiction
7 under section 9 of this act, whether at the time the petition is
8 filed or at any time before the appointment or issuance of the
9 order, the court shall stay the proceeding and communicate with
10 the court in the other state. If the court in the other state has
11 jurisdiction, the court in this state shall dismiss the petition
12 unless the court in the other state determines that the court in
13 this state is a more appropriate forum.

14 Sec. 16. (1) A guardian or conservator appointed in
15 this state may petition the court to transfer the guardianship or
16 conservatorship to another state.

17 (2) Notice of a petition under subsection (1) of this
18 section must be given to the persons that would be entitled to
19 notice of a petition in this state for the appointment of a
20 guardian or conservator.

21 (3) On the court's own motion or on request of the
22 guardian or conservator, the incapacitated or protected person, or
23 other person required to be notified of the petition, the court
24 shall hold a hearing on a petition filed pursuant to subsection (1)
25 of this section.

1 (4) The court shall issue an order provisionally granting
2 a petition to transfer a guardianship and shall direct the guardian
3 to petition for guardianship in the other state if the court is
4 satisfied that the guardianship will be accepted by the court in
5 the other state and the court finds that:

6 (a) The incapacitated person is physically present in or
7 is reasonable expected to move permanently to the other state;

8 (b) An objection to the transfer has not been made or,
9 if an objection has been made, the objector has not established
10 that the transfer would be contrary to the interests of the
11 incapacitated person; and

12 (c) Plans for care and services for the incapacitated
13 person in the other state are reasonable and sufficient.

14 (5) The court shall issue a provisional order granting
15 a petition to transfer a conservatorship and shall direct the
16 conservator to petition for conservatorship in the other state if
17 the court is satisfied that the conservatorship will be accepted by
18 the court of the other state and the court finds that:

19 (a) The protected person is physically present in or is
20 reasonable expected to move permanently to the other state, or the
21 protected person has a significant connection to the other state
22 considering the factors in subsection (2) of section 7 of this act;

23 (b) An objection to the transfer has not been made or, if
24 an objection has been made, the objector has not established that
25 the transfer would be contrary to the interests of the protected

1 person; and

2 (c) Adequate arrangements will be made for management of
3 the protected person's property.

4 (6) The court shall issue a final order confirming the
5 transfer and terminating the guardianship or conservatorship upon
6 its receipt of:

7 (a) A provisional order accepting the proceeding from the
8 court to which the proceeding is to be transferred which is issued
9 under provisions similar to section 17 of this act; and

10 (b) The documents required to terminate a guardianship or
11 conservatorship in this state.

12 Sec. 17. (1) To confirm transfer of a guardianship or
13 conservatorship transferred to this state under provisions similar
14 to section 16 of this act, the guardian or conservator must
15 petition the court in this state to accept the guardianship or
16 conservatorship. The petition must include a certified copy of the
17 other state's provisional order of transfer.

18 (2) Notice of a petition under subsection (1) of this
19 section must be given to those persons that would be entitled to
20 notice if the petition were a petition for the appointment of a
21 guardian or issuance of a protective order in both the transferring
22 state and this state. The notice must be given in the same manner
23 as notice is required to be given in this state.

24 (3) On the court's own motion or on request of the
25 guardian or conservator, the incapacitated or protected person, or

1 other person required to be notified of the proceeding, the court
2 shall hold a hearing on a petition filed pursuant to subsection (1)
3 of this section.

4 (4) The court shall issue an order provisionally granting
5 a petition filed under subsection (1) of this section unless:

6 (a) An objection is made and the objector establishes
7 that transfer of the proceeding would be contrary to the interests
8 of the incapacitated or protected person; or

9 (b) The guardian or conservator is ineligible for
10 appointment in this state.

11 (5) The court shall issue a final order accepting the
12 proceeding and appointing the guardian or conservator as guardian
13 or conservator in this state upon its receipt from the court from
14 which the proceeding is being transferred of a final order issued
15 under provisions similar to section 16 of this act transferring the
16 proceeding to this state.

17 (6) Not later than ninety days after issuance of a final
18 order accepting transfer of a guardianship or conservatorship, the
19 court shall determine whether the guardianship or conservatorship
20 needs to be modified to conform to the law of this state.

21 (7) In granting a petition under this section, the court
22 shall recognize a guardianship or conservatorship order from the
23 other state, including the determination of the incapacitated or
24 protected person's incapacity and the appointment of the guardian
25 or conservator.

1 (8) The denial by a court of this state of a petition to
2 accept a guardianship or conservatorship transferred from another
3 state does not affect the ability of the guardian or conservator
4 to seek appointment as guardian or conservator in this state under
5 the Nebraska Probate Code if the court has jurisdiction to make
6 an appointment other than by reason of the provisional order of
7 transfer.

8 Sec. 18. If a guardian has been appointed in another
9 state and a petition for the appointment of a guardian is not
10 pending in this state, the guardian appointed in the other state,
11 after giving notice to the appointing court of an intent to
12 register, may register the guardianship order in this state by
13 filing as a foreign judgment in a court, in any appropriate county
14 of this state, certified copies of the order and letters of office.

15 Sec. 19. If a conservator has been appointed in another
16 state and a petition for a protective order is not pending in
17 this state, the conservator appointed in the other state, after
18 giving notice to the appointing court of an intent to register, may
19 register the protective order in this state by filing as a foreign
20 judgment in a court of this state, in any county in which property
21 belonging to the protected person is located, certified copies of
22 the order and letters of office and of any bond.

23 Sec. 20. (1) Upon registration of a guardianship or
24 protective order from another state, the guardian or conservator
25 may exercise in this state all powers authorized in the order of

1 appointment except as prohibited under the laws of this state,
2 including maintaining actions and proceedings in this state and,
3 if the guardian or conservator is not a resident of this state,
4 subject to any conditions imposed upon nonresident parties.

5 (2) A court of this state may grant any relief available
6 under the Nebraska Uniform Adult Guardianship and Protective
7 Proceedings Jurisdiction Act and other law of this state to
8 enforce a registered order.

9 Sec. 21. In applying and construing this uniform act,
10 consideration must be given to the need to promote uniformity of
11 the law with respect to its subject matter among states that enact
12 it.

13 Sec. 22. The Nebraska Uniform Adult Guardianship and
14 Protective Proceedings Jurisdiction Act modifies, limits, and
15 supersedes the federal Electronic Signatures in Global and National
16 Commerce Act, 15 U.S.C. section 7001, as the act existed on January
17 1, 2010, but does not modify, limit, or supersede section 101(c)
18 of the act, 15 U.S.C. section 7001(c), or authorize electronic
19 delivery of any of the notices described in section 103(b) of the
20 act, 15 U.S.C. section 7003(b).

21 Sec. 23. (1) The Nebraska Uniform Adult Guardianship and
22 Protective Proceedings Jurisdiction Act applies to guardianship and
23 protective proceedings begun on or after January 1, 2011.

24 (2) Sections 1 to 6 and 16 to 23 of this act apply to
25 proceedings begun before January 1, 2011, regardless of whether a

1 guardianship or protective order has been issued.

2 Sec. 24. Section 30-2603, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 30-2603 Any person under a duty to pay or deliver money
5 or personal property to a minor may perform this duty, in amounts
6 not exceeding twenty-five thousand dollars per annum, by paying or
7 delivering the money or property to:

8 (1) The minor, if he or she has attained the age of
9 ~~eighteen~~ seventeen years or is married;

10 (2) Any person having the care and custody of the minor
11 with whom the minor resides;

12 (3) A guardian of the minor; or

13 (4) A financial institution incident to a deposit in a
14 federally insured savings account in the sole name of the minor and
15 giving notice of the deposit to the minor.

16 This section does not apply if the person making payment
17 or delivery has actual knowledge that a conservator has been
18 appointed or proceedings for appointment of a conservator of the
19 estate of the minor are pending. The persons, other than the minor
20 or any financial institution under subdivision (4) of this section,
21 receiving money or property for a minor are obligated to apply
22 the money to the support and education of the minor but may not
23 pay themselves except by way of reimbursement for out-of-pocket
24 expenses for goods and services necessary for the minor's support.
25 Any excess sums shall be preserved for future support of the minor,

1 and any balance not so used and any property received for the minor
2 must be turned over to the minor when he or she attains majority.
3 Persons who pay or deliver in accordance with provisions of this
4 section are not responsible for the proper application thereof.

5 Sec. 25. Section 30-2607, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 30-2607 A minor of fourteen or more years but less
8 than eighteen years may prevent an appointment of his or her
9 testamentary guardian from becoming effective, or may cause a
10 previously accepted appointment to terminate, by filing with the
11 court in which the will is probated a written objection to the
12 appointment before it is accepted or within thirty days after
13 notice of its acceptance. An objection may be withdrawn. An
14 objection does not preclude appointment by the court in a proper
15 proceeding of the testamentary nominee, or any other suitable
16 person.

17 Sec. 26. Section 30-2610, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 30-2610 The court may appoint as guardian any person
20 whose appointment would be in the best interests of the minor.
21 The court shall appoint a person nominated by the minor, if the
22 minor is fourteen years of age or older but less than eighteen
23 years, unless the court finds the appointment contrary to the best
24 interests of the minor.

25 Sec. 27. Section 30-2611, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 30-2611 (a) Notice of the time and place of hearing of
3 a petition for the appointment of a guardian of a minor is to be
4 given by the petitioner in the manner prescribed by section 30-2220
5 to:

6 (1) the minor, if he or she is fourteen or more years of
7 age but less than eighteen years of age;

8 (2) the person who has had the principal care and custody
9 of the minor during the sixty days preceding the date of the
10 petition; and

11 (3) any living parent of the minor.

12 (b) Upon hearing, if the court finds that a qualified
13 person seeks appointment, venue is proper, the required notices
14 have been given, the requirements of section 30-2608 have been met,
15 and the welfare and best interests of the minor will be served by
16 the requested appointment, it shall make the appointment. In other
17 cases the court may dismiss the proceedings, or make any other
18 disposition of the matter that will best serve the interest of the
19 minor.

20 (c) If necessary, the court may appoint a temporary
21 guardian, with the status of an ordinary guardian of a minor, but
22 the authority of a temporary guardian shall not last longer than
23 six months. In an emergency, the court may appoint a temporary
24 guardian of a minor without notice, pending notice and hearing.

25 (d) If, at any time in the proceeding, the court

1 determines that the interests of the minor are or may be
2 inadequately represented, it may appoint an attorney to represent
3 the minor, giving consideration to the preference of the minor if
4 the minor is fourteen years of age or older but less than eighteen
5 years.

6 Sec. 28. Section 30-2616, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 30-2616 (a) Any person interested in the welfare of a
9 ward, or the ward, if fourteen or more years of age but less than
10 eighteen years of age, may petition for removal of a guardian on
11 the ground that removal would be in the best interest of the ward.
12 A guardian may petition for permission to resign. A petition for
13 removal or for permission to resign may, but need not, include a
14 request for appointment of a successor guardian.

15 (b) After notice and hearing on a petition for removal or
16 for permission to resign, the court may terminate the guardianship
17 and make any further order that may be appropriate.

18 (c) If, at any time in the proceeding, the court
19 determines that the interests of the ward are, or may be,
20 inadequately represented, it may appoint an attorney to represent
21 the minor, giving consideration to the preference of the minor if
22 the minor is fourteen or more years of age but less than eighteen
23 years of age.

24 Sec. 29. Section 30-2636, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 30-2636 (a) Upon receipt of a petition for appointment of
2 a conservator or other protective order because of minority, the
3 court shall set a date for hearing on the matters alleged in the
4 petition. If, at any time in the proceeding, the court determines
5 that the interests of the minor are or may be inadequately
6 represented, the court may appoint an attorney to represent the
7 minor, giving consideration to the choice of the minor if he or she
8 is fourteen years of age or older but less than eighteen years of
9 age. A lawyer appointed by the court to represent a minor has the
10 powers and duties of a guardian ad litem.

11 (b) Upon receipt of a petition for appointment of a
12 conservator or other protective order for reasons other than
13 minority, the court shall set a date for hearing. Unless the person
14 to be protected has counsel of his or her own choice, the court
15 may appoint an attorney to represent him or her in the proceeding.
16 The court may appoint a guardian ad litem to advocate for the
17 best interests of the person to be protected. If the alleged
18 disability is mental illness, mental deficiency, physical illness
19 or disability, chronic use of drugs, or chronic intoxication, the
20 court may direct that the person to be protected be examined by a
21 physician designated by the court, preferably a physician who is
22 not connected with any institution in which the person is a patient
23 or is detained. The court may send a visitor to interview the
24 person to be protected. The visitor may be a guardian ad litem or
25 an officer or employee of the court.

1 (c) After hearing, upon finding that clear and convincing
2 evidence exists for the appointment of a conservator or other
3 protective order, the court shall make an appointment or other
4 appropriate protective order.

5 Sec. 30. Section 30-2639, Reissue Revised Statutes of
6 Nebraska, is amended to read:

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

23 (b) Persons who are not disqualified under subsection
24 (a) of this section and who exhibit the ability to exercise the
25 powers to be assigned by the court have priority for appointment as

1 conservator in the following order:

2 (1) A person nominated most recently by one of the
3 following methods:

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

6 (ii) A person acting under a power of attorney or durable
7 power of attorney; or

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

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

14 (3) An individual or corporation nominated by the
15 protected person if he or she is fourteen or more years of age
16 but less than eighteen years of age and has, in the opinion of the
17 court, sufficient mental capacity to make an intelligent choice;

18 (4) The spouse of the protected person;

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

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

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

25 (8) A person nominated by the person who is caring for

1 him or her or paying benefits to him or her.

2 (c) When appointing a conservator, the court shall take
3 into consideration the expressed wishes of the person to be
4 protected. A person having priority listed in subdivision (2), (4),
5 (5), (6), or (7) of subsection (b) of this section may nominate
6 in writing a person to serve in his or her stead. With respect to
7 persons having equal priority, the court shall select the person it
8 deems best qualified of those willing to serve. The court, acting
9 in the best interest of the protected person, may pass over a
10 person having priority and appoint a person having lower priority
11 or no priority.

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

19 Sec. 31. Section 30-2647, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 30-2647 Within ninety days after his or her appointment,
22 every conservator shall prepare and file with the appointing court
23 a complete inventory of the estate of the protected person together
24 with his or her oath or affirmation that it is complete and
25 accurate so far as he or she is informed. The conservator shall

1 provide a copy thereof to the protected person if he or she can
2 be located, has attained the age of fourteen years or older but
3 is less than eighteen years, and has sufficient mental capacity to
4 understand these matters, and to any parent or guardian with whom
5 the protected person resides. The conservator shall keep suitable
6 records of his or her administration and exhibit the same on
7 request of any interested person.

8 Sec. 32. Original sections 30-2603, 30-2607, 30-2610,
9 30-2611, 30-2616, 30-2636, 30-2639, and 30-2647, Reissue Revised
10 Statutes of Nebraska, are repealed.