

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1216

Introduced by Cavanaugh, M., 6.

Read first time January 20, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Probate Code; to amend
- 2 sections 30-2627 and 30-2639, Reissue Revised Statutes of Nebraska;
- 3 to change provisions relating to eligibility to be appointed as a
- 4 guardian or as a conservator of an estate; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2627, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2627 (a) Any competent person or the Public Guardian may be
4 appointed guardian of a person alleged to be incapacitated, ~~except that~~
5 ~~it shall be unlawful for any agency providing residential care in an~~
6 ~~institution or community-based program, or any owner, part owner,~~
7 ~~manager, administrator, employee, or spouse of an owner, part owner,~~
8 ~~manager, administrator, or employee of any nursing home, room and board~~
9 ~~home, assisted-living facility, or institution engaged in the care,~~
10 ~~treatment, or housing of any person physically or mentally handicapped,~~
11 ~~infirm, or aged to be appointed guardian of any such person residing,~~
12 ~~being under care, receiving treatment, or being housed in any such home,~~
13 ~~facility, or institution within the State of Nebraska. Nothing in this~~
14 ~~subsection shall prevent the spouse, adult child, parent, or other~~
15 ~~relative of the person alleged to be incapacitated from being appointed~~
16 ~~guardian or prevent the guardian officer for one of the Nebraska veterans~~
17 ~~homes as provided in section 80-327 from being appointed guardian or~~
18 ~~conservator for the person alleged to be incapacitated. It shall be~~
19 ~~unlawful for any county attorney or deputy county attorney appointed as~~
20 ~~guardian for a person alleged to be incapacitated to circumvent his or~~
21 ~~her duties or the rights of the ward pursuant to the Nebraska Mental~~
22 ~~Health Commitment Act by consenting to inpatient or outpatient~~
23 ~~psychiatric treatment over the objection of the ward.~~

24 (b) ~~Persons who are not disqualified under subsection (a) of this~~
25 ~~section and~~ who exhibit the ability to exercise the powers to be assigned
26 by the court have priority for appointment as guardian in the following
27 order:

28 (1) A person nominated most recently by one of the following
29 methods:

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

1 (ii) A person acting under a power of attorney or durable power of
2 attorney; or

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

6 (2) The spouse of the incapacitated person;

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

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

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

12 (6) A person nominated by the person who is caring for him or her or
13 paying benefits to him or her;

14 (7) The Public Guardian.

15 (c) When appointing a guardian, the court shall take into
16 consideration the expressed wishes of the allegedly incapacitated person.
17 The court, acting in the best interest of the incapacitated person, may
18 pass over a person having priority and appoint a person having lower
19 priority or no priority. With respect to persons having equal priority,
20 the court shall select the person it deems best qualified to serve.

21 (d) In its order of appointment, unless waived by the court, the
22 court shall require any person appointed as guardian to successfully
23 complete within three months of such appointment a training program
24 approved by the Public Guardian. If the person appointed as guardian does
25 not complete the training program, the court shall issue an order to show
26 cause why such person should not be removed as guardian.

27 (e) The court may require a guardian to furnish a bond in an amount
28 and conditioned in accordance with the provisions of sections 30-2640 and
29 30-2641. The Public Guardian shall not be required to post bond.

30 Sec. 2. Section 30-2639, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 30-2639 (a) The court may appoint an individual, a corporation with
2 general power to serve as trustee, or the Public Guardian as conservator
3 of the estate of a protected person, ~~except that it shall be unlawful for~~
4 ~~any agency providing residential care in an institution or community-~~
5 ~~based program or any owner, part owner, manager, administrator, employee,~~
6 ~~or spouse of an owner, part owner, manager, administrator, or employee of~~
7 ~~any nursing home, room and board home, assisted-living facility, or~~
8 ~~institution engaged in the care, treatment, or housing of any person~~
9 ~~physically or mentally handicapped, infirm, or aged to be appointed~~
10 ~~conservator of any such person residing, being under care, receiving~~
11 ~~treatment, or being housed in any such home, facility, or institution~~
12 ~~within the State of Nebraska. Nothing in this subsection shall prevent~~
13 ~~the spouse, adult child, parent, or other relative of the person in need~~
14 ~~of protection from being appointed conservator.~~

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

19 (1) A person nominated most recently by one of the following
20 methods:

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

23 (ii) A person acting under a power of attorney or durable power of
24 attorney; or

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

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

31 (3) An individual or corporation nominated by the protected person

1 if he or she is fourteen or more years of age and has, in the opinion of
2 the court, sufficient mental capacity to make an intelligent choice;

3 (4) The spouse of the protected person;

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

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

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

9 (8) A person nominated by the person who is caring for him or her or
10 paying benefits to him or her;

11 (9) The Public Guardian.

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

21 (d) In its order of appointment, unless waived by the court, the
22 court shall require any person appointed as conservator to successfully
23 complete within three months of such appointment a training program
24 approved by the Public Guardian. If the person appointed as conservator
25 does not complete the training program, the court shall issue an order to
26 show cause why such person should not be removed as conservator.

27 Sec. 3. Original sections 30-2627 and 30-2639, Reissue Revised
28 Statutes of Nebraska, are repealed.