

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1260

Introduced by DeBoer, 10.

Read first time January 20, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to guardianship and conservatorship; to amend
2 sections 30-4101, 30-4106, 30-4109, 30-4112, and 30-4205, Reissue
3 Revised Statutes of Nebraska; to change membership of the Advisory
4 Council on Public Guardianship; to provide duties for the Public
5 Guardian; to provide for an application process; to change
6 provisions relating to appointment of the Public Guardian and duties
7 of guardian ad litem; to harmonize provisions; and to repeal the
8 original sections.

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

1 Section 1. Section 30-4101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-4101 Sections 30-4101 to 30-4118 and section 4 of this act shall
4 be known and may be cited as the Public Guardianship Act.

5 Sec. 2. Section 30-4106, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 30-4106 The Advisory Council on Public Guardianship is created. The
8 council shall be appointed by the State Court Administrator, be comprised
9 of individuals from a variety of disciplines who are knowledgeable in
10 guardianship and conservatorship, and be representative of the
11 geographical and cultural diversity of the state and reflect gender
12 fairness. The council shall consist of the following members: A
13 representative of the Nebraska County Court Judges Association, a
14 representative of a hospital licensed under the Health Care Facility
15 Licensure Act, attorneys licensed to practice law in this state, social
16 workers, mental health professionals, professionals with expertise in the
17 aging population, developmental disability professionals, and other
18 interested groups or individuals.

19 Sec. 3. Section 30-4109, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 30-4109 Consistent with the purposes and objectives of the Public
22 Guardianship Act and in consultation with the council, the Public
23 Guardian shall:

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

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

28 (3) Develop and implement an application and process to determine
29 and prioritize the needs of individuals seeking guardianship or
30 conservatorship services as provided in section 4 of this act;

31 (4) (3) Prepare a biennial budget for the implementation of the act;

1 (5) (4) Develop guidelines for a sliding scale of fees to be charged
2 for public guardianship and public conservatorship services;

3 (6) (5) Maintain, in conjunction with private and other public
4 resources, a curricula for training sessions to be made available for
5 successor guardians and successor conservators and private guardians and
6 private conservators;

7 (7) (6) Maintain training programs available statewide to offer the
8 training curricula for interested parties to include:

9 (a) Helping a guardian understand his or her ward's disabilities and
10 a conservator understand his or her fiduciary duties with respect to his
11 or her protected person;

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

14 (c) Helping a guardian with the preparation and revision of
15 guardianship plans and reports and a conservator with the preparation and
16 revision of accountings; and

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

20 (8) (7) Promote public awareness of guardianship and
21 conservatorship, the responsibilities attached, and the need for more
22 private guardians and private conservators; and

23 (9) (8) Apply for and receive funds from public and private sources
24 for carrying out the purposes and obligations of the act.

25 Sec. 4. (1) The Public Guardian shall, in consultation with the
26 council and stakeholders identified by the council, develop an
27 application and process to determine and prioritize the needs of
28 individuals seeking guardianship or conservatorship services from the
29 Public Guardian. The process shall include a system of prioritization
30 based upon a determination of need. The Public Guardian shall make a
31 description of the system of prioritization available to the public.

1 (2) If an individual is unable or unwilling to provide information
2 on the application, a representative of the individual or a
3 representative of a hospital, nursing facility, or other facility
4 licensed under the Health Care Facility Licensure Act where the
5 individual is receiving care may submit the application regarding the
6 individual. The representative may submit such available supporting
7 documents as the representative deems necessary. An incomplete
8 application may be submitted with information available to the applicant
9 or representative and shall be considered by the office for determination
10 of need and prioritization. An application shall not receive a lower
11 prioritization because the application is completed by a representative
12 or because the applicant or representative is unable to obtain complete
13 information for the application.

14 (3) The office shall review applications and make a recommendation
15 to the court, prior to any hearing on the matter, as to whether the
16 Public Guardian should be appointed as guardian or conservator for an
17 individual.

18 (4) Upon request by an applicant or representative, the office shall
19 provide information regarding the process of appointing the Public
20 Guardian as guardian or conservator, the status of an application, and
21 the anticipated timeline until appointment of a guardian or conservator.

22 Sec. 5. Section 30-4112, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 30-4112 A court may order appointment of the Public Guardian as a
25 guardian or conservator only after reviewing the application provided for
26 in section 4 of this act, notice to the Public Guardian, and a
27 determination that the appointment or order is necessary and will not
28 result in the Public Guardian having more appointments than permitted by
29 section 30-4115. In making the The determination of necessity, may
30 require the court shall to ascertain whether there is any other
31 alternative to public guardianship or public conservatorship. In

1 ascertaining the availability of alternatives, the court shall consider
2 the information provided in the application provided for in section 4 of
3 this act and such other matters as the court deems appropriate.

4 Sec. 6. Section 30-4205, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 30-4205 (1) The guardian ad litem shall make recommendations to the
7 court regarding a temporary or permanent guardianship, conservatorship,
8 or other protective order. The report shall be in writing and provided to
9 the court, together with the application provided for in section 4 of
10 this act, at least one week prior to the hearing date. A copy of the
11 report shall be provided to all interested persons.

12 (2) For a guardianship proceeding, the report shall address whether
13 the person for whom the guardianship is sought is an incapacitated
14 person. If the guardian ad litem determines that the person is
15 incapacitated, the guardian ad litem shall make recommendations as to
16 whether the court should order a limited or full guardianship. If the
17 guardian ad litem recommends a limited guardianship, the report shall
18 include recommendations on the authorities and responsibilities the
19 guardian and ward shall have. If a full guardianship is recommended, the
20 report shall specifically address why a full guardianship is necessary to
21 protect the best interests of the incapacitated person.

22 Sec. 7. Original sections 30-4101, 30-4106, 30-4109, 30-4112, and
23 30-4205, Reissue Revised Statutes of Nebraska, are repealed.