

AMENDMENTS TO LB985

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 **Section 1.** Section 30-2201, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

5 30-2201 Sections 30-401 to 30-406, 30-701 to 30-713, 30-2201 to
6 30-2902, 30-3901 to 30-3923, 30-4001 to 30-4045, and 30-4201 to 30-4210
7 and section 9 of this act and the Public Guardianship Act shall be known
8 and may be cited as the Nebraska Probate Code.

9 **Sec. 2.** Section 30-2619, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 30-2619 (a) The person alleged to be incapacitated or any person
12 interested in his or her welfare may petition for a finding of incapacity
13 and appointment of a guardian or a standby guardian. The petition shall
14 be verified and shall contain specific allegations with regard to each of
15 the areas as provided under section 30-2619.01 in which the petitioner
16 claims that the person alleged to be incapacitated lacks sufficient
17 understanding to make or communicate responsible decisions concerning his
18 or her own person. An interested person may file a motion to make more
19 definite and certain requesting a specific description of the functional
20 limitations and physical and mental condition of the person alleged to be
21 incapacitated with the specific reasons prompting the request for
22 guardianship.

23 (b) Upon the filing of a petition, the court shall set a date for
24 hearing on the issues of incapacity and unless the person alleged to be
25 incapacitated has retained counsel of his or her own choice or has
26 otherwise indicated a desire for an attorney of his or her own choice,
27 the court may appoint an attorney to represent him or her in the

1 proceeding. The court may appoint a guardian ad litem as provided in
2 sections 30-4201 to 30-4210 to advocate for the best interests of the
3 person alleged to be incapacitated.

4 (c) The person alleged to be incapacitated may be examined by a
5 physician appointed by the court. The physician shall submit his or her
6 report in writing to the court and may be interviewed by a visitor, if so
7 appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

8 (d) The person alleged to be incapacitated is entitled to be present
9 at the hearing virtually or in person and to see and hear all evidence
10 bearing upon his or her condition. He or she is entitled to be present by
11 counsel, to compel the attendance of witnesses, to present evidence, to
12 cross-examine witnesses, including the court-appointed physician and the
13 visitor appointed by the court pursuant to sections 30-2619.01 and
14 30-2624, and to appeal any final orders or judgments. The issue may be
15 determined at a closed hearing only if the person alleged to be
16 incapacitated or his or her counsel so requests.

17 (e) At any hearing conducted under this section, the court may
18 designate one or more standby guardians of the person whose appointment
19 will become effective immediately upon the death, unwillingness or
20 inability to act, resignation, or removal by the court of the initially
21 appointed guardian and upon compliance with any rules promulgated by the
22 Supreme Court. The standby guardian shall have the same powers and duties
23 as the initially appointed guardian. The standby guardian shall receive a
24 copy of the order establishing or modifying the initial guardianship and
25 the order designating the standby guardian. Upon assuming office, the
26 standby guardian shall so notify the court in writing. Upon notification
27 and upon compliance with any rules promulgated by the Supreme Court, the
28 court shall issue new letters of guardianship that specify that the
29 standby guardianship appointment is permanent. A standby guardian shall
30 complete the training required by section 30-2601.01 at the time or times
31 required by rules promulgated by the Supreme Court or as otherwise

1 provided by order of the county court.

2 (f) The Public Guardian shall not be appointed as a standby
3 guardian.

4 **Sec. 3.** Section 30-2623, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 30-2623 (a) On petition of the ward or any person interested in the
7 ward's ~~his~~ welfare, the court may remove a guardian and appoint a
8 successor if in the best interests of the ward. On petition of the
9 guardian, the court may accept the guardian's ~~his~~ resignation and make
10 any other order which may be appropriate.

11 (b) An order adjudicating incapacity may specify a minimum period,
12 not exceeding one year, during which no petition for an adjudication that
13 the ward is no longer incapacitated may be filed without special leave.
14 Subject to this restriction, the ward or any person interested in the
15 ward's ~~his~~ welfare may petition for an order that the ward ~~he~~ is no
16 longer incapacitated, and for removal or resignation of the guardian. A
17 request for this order may be made by informal letter to the court or
18 judge and any person who knowingly interferes with transmission of this
19 kind of request to the court or judge may be adjudged guilty of contempt
20 of court.

21 (c) Before removing a guardian, accepting the resignation of a
22 guardian, or ordering that a ward's incapacity has terminated, the court,
23 following the same procedures to safeguard the rights of the ward as
24 apply to a petition for appointment of a guardian, may send a visitor to
25 the residence of the present guardian and to the place where the ward
26 resides or is detained, to observe conditions and report in writing to
27 the court.

28 (d) In any court hearing under this section, the ward shall have the
29 right to attend the hearing virtually or in person.

30 **Sec. 4.** Section 30-2625, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 30-2625 (a) In a proceeding for the appointment of a guardian for a
2 person alleged to be incapacitated or the removal of a guardian of a ward
3 other than the appointment of a temporary guardian or temporary
4 suspension of a guardian, notice of hearing shall be given to each of the
5 following:

6 (1) The ward or the person alleged to be incapacitated and his or
7 her spouse, parents, and adult children;

8 (2) Any person who is serving as guardian or conservator of the ward
9 or who has care and custody of a person alleged to be incapacitated; and

10 (3) If no other person is notified under subdivision (1) of this
11 subsection, at least one of the closest adult relatives of the ward or
12 person alleged to be incapacitated, if any can be found.

13 (b) Notice which is appropriate to the circumstances of the ward or
14 person alleged to be incapacitated shall be served personally at least
15 fourteen days prior to the hearing on the ward or person alleged to be
16 incapacitated and his or her spouse and parents if they can be found
17 within the state. The court may require the petitioner to serve notice in
18 alternative formats or with appropriate auxiliary aids and services if
19 necessary to ensure equally effective communication with the ward or
20 person alleged to be incapacitated, including, but not limited to, the
21 use of braille, sign language, large print, reading aloud, or other
22 reasonable accommodation for the known disabilities of the individual
23 based on the allegations specified in the petition. Waiver of notice by
24 the person alleged to be incapacitated shall not be effective unless he
25 or she attends the hearing and the court determines that the waiver is
26 appropriate.

27 (c) In addition to notifying him or her of the filing of the
28 petition and the time and place of the hearing on the petition, the
29 notice required to be served upon the person alleged to be incapacitated
30 shall list the following rights of the person:

31 (1) The right to request the appointment of an attorney;

1 (2) The right to present evidence in his or her own behalf;

2 (3) The right to request that the power of the guardian, if
3 appointed, be limited by the court;

4 (4) The right to be notified regarding how to contact the temporary
5 guardian if a temporary guardian is appointed;

6 (5) The right to compel attendance of witnesses;

7 (6) The right to cross-examine witnesses, including the court-
8 appointed physician;

9 (7) The right to appeal any final order; ~~and~~

10 (8) The right to request a hearing closed to the public; ~~and -~~

11 (9) The right to attend each court hearing virtually or in person,
12 including a hearing held on the original petition, a hearing held
13 regarding a change or termination of a guardian, and a show cause
14 hearing.

15 (d) If a temporary guardian has been appointed, the notice required
16 in subsection (c) of this section shall include a notice of such
17 appointment and of the right to request an expedited hearing pursuant to
18 section 30-2626.

19 **Sec. 5.** Section 30-2627, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 30-2627 (a) Any competent person or the Public Guardian may be
22 appointed guardian of a person alleged to be incapacitated, except that
23 it shall be unlawful for any agency providing residential care in an
24 institution or community-based program, or any owner, part owner,
25 manager, administrator, employee, or spouse of an owner, part owner,
26 manager, administrator, or employee of any nursing home, room and board
27 home, assisted-living facility, or institution engaged in the care,
28 treatment, or housing of any person physically or mentally handicapped,
29 infirm, or aged to be appointed guardian of any such person residing,
30 being under care, receiving treatment, or being housed in any such home,
31 facility, or institution within the State of Nebraska. Nothing in this

1 subsection shall prevent the spouse, adult child, parent, or other
2 relative of the person alleged to be incapacitated from being appointed
3 guardian or prevent the guardian officer for one of the Nebraska veterans
4 homes as provided in section 80-327 from being appointed guardian or
5 conservator for the person alleged to be incapacitated. It shall be
6 unlawful for any county attorney or deputy county attorney appointed as
7 guardian for a person alleged to be incapacitated to circumvent his or
8 her duties or the rights of the ward pursuant to the Nebraska Mental
9 Health Commitment Act by consenting to inpatient or outpatient
10 psychiatric treatment over the objection of the ward.

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

15 (1) A person nominated most recently by one of the following
16 methods:

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

19 (ii) A person acting under a power of attorney or durable power of
20 attorney; or

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

24 (2) The spouse of the incapacitated person;

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

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

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

30 (6) A person nominated by the person who is caring for him or her or
31 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 person.
4 The court, acting in the best interest of the incapacitated person, may
5 pass over a person having priority and appoint a person having lower
6 priority or no priority. With respect to persons having equal priority,
7 the court shall select the person it deems best qualified to serve.

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

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

17 (f) A guardian shall monitor the ward or protected person and his or
18 her care on a continuing basis no less than once per month. The guardian
19 shall maintain a written record of each visit with a ward or protected
20 person and shall have periodic contact with all public or private
21 individuals and agencies that provide care or related services to the
22 ward or protected person.

23 **Sec. 6.** Section 30-2628, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 30-2628 (a) Except as limited by section 30-2620, a guardian of an
26 incapacitated person has the same powers, rights, and duties respecting
27 the guardian's ward that a parent has respecting the parent's
28 unemancipated minor child, except that a guardian is not liable to third
29 persons for acts of the ward solely by reason of the parental
30 relationship. In particular, and without qualifying the foregoing, a
31 guardian has the following powers and duties, except as may be specified

1 by order of the court:

2 (1) To the extent that it is consistent with the terms of any order
3 by a court of competent jurisdiction relating to detention or commitment
4 of the ward, a guardian is entitled to custody of the person of his or
5 her ward and may establish the ward's place of abode within this state
6 or, with court permission, outside of this state. When establishing the
7 ward's place of abode, a guardian shall make every reasonable effort to
8 ensure that the placement is the least restrictive alternative. A
9 guardian shall authorize a placement to a more restrictive environment
10 only after careful evaluation of the need for such placement. The
11 guardian may obtain a professional evaluation or assessment that such
12 placement is in the best interest of the ward.

13 (2) If entitled to custody of his or her ward, a guardian shall make
14 provision for the care, comfort, and maintenance of his or her ward and,
15 whenever appropriate, arrange for the ward's training and education.
16 Without regard to custodial rights of the ward's person, a guardian shall
17 take reasonable care of his or her ward's clothing, furniture, vehicles,
18 and other personal effects and commence protective proceedings if other
19 property of his or her ward is in need of protection.

20 (3) A guardian may give any consents or approvals that may be
21 necessary to enable the ward to receive medical, psychiatric,
22 psychological, or other professional care, counsel, treatment, or
23 service. When making such medical or psychiatric decisions, the guardian
24 shall consider and carry out the intent of the ward expressed prior to
25 incompetency to the extent allowable by law. Notwithstanding this
26 provision or any other provision of the Nebraska Probate Code, the ward
27 may authorize the release of financial, medical, and other confidential
28 records pursuant to sections 20-161 to 20-166.

29 (4) If no conservator for the estate of the ward has been appointed,
30 a guardian shall, within thirty days after appointment, prepare and file
31 with the appointing court a complete inventory of the ward's estate

1 together with the guardian's oath or affirmation that the inventory is
2 complete and accurate so far as the guardian is informed. The guardian
3 shall mail a copy thereof by first-class mail to the ward, if the ward
4 can be located and has attained the age of fourteen years, and to all
5 other interested persons as defined in section 30-2601. The guardian
6 shall file with the court a certificate of mailing showing that copies
7 were sent to all interested persons by first-class mail along with a form
8 to send back to the court that indicates if such person wants to continue
9 receiving notifications about the proceedings. The guardian shall keep
10 suitable records of the guardian's administration and exhibit the same on
11 request of any interested person. To the extent a guardian, who has not
12 been named a conservator, has possession or control of the ward's estate,
13 the guardian shall file with the court an updated inventory every year
14 along with a certificate of mailing showing that copies were sent to all
15 interested persons and, if a bond has been required, to the bonding
16 company by first-class mail.

17 (5) If no conservator for the estate of the ward has been appointed,
18 a guardian may:

19 (i) Institute proceedings to compel any person under a duty to
20 support the ward or to pay sums for the welfare of the ward to perform
21 such person's duty;

22 (ii) Receive money and tangible property deliverable to the ward and
23 apply the money and property for support, care, and education of the
24 ward; but a guardian may not use funds from his or her ward's estate for
25 room and board which the guardian or the guardian's spouse, parent, or
26 child has furnished the ward unless a charge for the service is approved
27 by order of the court made upon notice to at least one of the next of kin
28 of the ward, if notice is possible. A guardian must exercise care to
29 conserve any excess for the ward's needs; and

30 (iii) Exercise a settlor's powers with respect to revocation,
31 amendment, or distribution of trust property when authorized by a court

1 acting under the authority of subsection (f) of section 30-3854. In
2 acting under the authority of subsection (f) of section 30-3854, the
3 court shall proceed in the same manner as provided under subdivision (3)
4 of section 30-2637.

5 (6) A guardian is required to report the condition of his or her
6 ward and of the estate which has been subject to the guardian's
7 possession or control, at least every year and as required by the court
8 or court rule. The court shall receive from any interested person, for a
9 period of thirty days after the filing of the guardian's report, any
10 comments with regard to the need for continued guardianship or amendment
11 of the guardianship order. If the court has reason to believe that
12 additional rights should be returned to the ward or assigned to the
13 guardian, the court shall set a date for a hearing and may provide all
14 protections as set forth for the original finding of incapacity and
15 appointment of a guardian.

16 (7) If a conservator has been appointed, all of the ward's estate
17 received by the guardian in excess of those funds expended to meet
18 current expenses for support, care, and education of the ward must be
19 paid to the conservator for management as provided in the Nebraska
20 Probate Code, and the guardian must account to the conservator for funds
21 expended.

22 (b) Any guardian of one for whom a conservator also has been
23 appointed shall control the custody and care of the ward and is entitled
24 to receive reasonable sums for the guardian's services and for room and
25 board furnished to the ward as agreed upon between the guardian and the
26 conservator if the amounts agreed upon are reasonable under the
27 circumstances. The guardian may request the conservator to expend the
28 ward's estate by payment to third persons or institutions for the ward's
29 care and maintenance.

30 (c) Nothing in subdivision (a)(3) of this section or in any other
31 part of this section shall be construed to alter the decisionmaking

1 authority of an attorney in fact designated and authorized under sections
2 30-3401 to 30-3432 to make health care decisions pursuant to a power of
3 attorney for health care.

4 (d) A guardian shall not accept an appointment as a guardian for an
5 individual if the guardian serves as a guardian or conservator for twenty
6 individuals.

7 **Sec. 7.** Section 30-2636, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 30-2636 (a) Upon receipt of a petition for appointment of a
10 conservator or other protective order because of minority, the court
11 shall set a date for hearing on the matters alleged in the petition. If,
12 at any time in the proceeding, the court determines that the interests of
13 the minor are or may be inadequately represented, the court may appoint
14 an attorney to represent the minor, giving consideration to the choice of
15 the minor if he or she is fourteen years of age or older. A lawyer
16 appointed by the court to represent a minor as provided in sections
17 30-4201 to 30-4210 has the powers and duties of a guardian ad litem.

18 (b) Upon receipt of a petition for appointment of a conservator or
19 other protective order for reasons other than minority, the court shall
20 set a date for hearing. Unless the person to be protected has counsel of
21 his or her own choice, the court may appoint an attorney to represent him
22 or her in the proceeding. The court may appoint a guardian ad litem as
23 provided in sections 30-4201 to 30-4210 to advocate for the best
24 interests of the person to be protected. If the alleged disability is
25 mental illness, mental deficiency, physical illness or disability,
26 chronic use of drugs, or chronic intoxication, the court may direct that
27 the person to be protected be examined by a physician designated by the
28 court, preferably a physician who is not connected with any institution
29 in which the person is a patient or is detained. The court may send a
30 visitor to interview the person to be protected. The visitor may be a
31 guardian ad litem or an officer or employee of the court.

1 (c) The minor or person to be protected under subsections (a) and
2 (b) of this section shall have the right to attend each court hearing
3 virtually or in person.

4 (d) ~~(e)~~ After hearing, upon finding that clear and convincing
5 evidence exists for the appointment of a conservator or other protective
6 order, the court shall make an appointment or other appropriate
7 protective order.

8 **Sec. 8.** Section 30-2655, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 30-2655 (a) The court may, at the time of appointment or later,
11 limit the powers of a conservator otherwise conferred by sections 30-2653
12 and 30-2654, or previously conferred by the court, and may at any time
13 relieve the conservator of any limitation. If the court limits any power
14 conferred on the conservator by section 30-2653 or 30-2654, the
15 limitation shall be endorsed upon the conservator's letters of
16 appointment.

17 (b) A conservator shall not change a protected person's place of
18 abode to a location outside of the State of Nebraska without court
19 permission.

20 (c) A conservator shall not accept an appointment as a conservator
21 for an individual if the conservator serves as a guardian or conservator
22 for twenty individuals.

23 **Sec. 9.** In any judicial proceeding involving the appointment of a
24 guardian or a conservator, the administration of a guardianship or
25 conservatorship, or an accounting for a guardianship or a
26 conservatorship, the court, as justice and equity may require, may award
27 costs and expenses, including reasonable attorney's fees, to any party,
28 to be paid by another party or from the trust that is the subject of the
29 controversy.

30 **Sec. 10.** Original sections 30-2619, 30-2623, 30-2625, 30-2627,
31 30-2628, 30-2636, and 30-2655, Reissue Revised Statutes of Nebraska, and

1 section 30-2201, Revised Statutes Cumulative Supplement, 2024, are
2 repealed.