

ENGROSSED LEGISLATIVE BILL 985

Introduced by DeBoer, 10; Bosn, 25; Hughes, 24; Rountree, 3.

A BILL FOR AN ACT relating to the Nebraska Probate Code; to amend sections 30-2619, 30-2623, 30-2628, 30-2636, and 30-2655, Reissue Revised Statutes of Nebraska, and section 30-2201, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to court appointment, removal or resignation, and powers and duties of guardians and the powers of conservators; to provide a right of attendance to certain court hearings; to provide a power to courts for the awarding of cost and expenses in guardianship and conservatorship proceedings; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

specific reasons prompting the request for guardianship.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the person alleged to be incapacitated has retained counsel of his or her own choice or has otherwise indicated a desire for an attorney of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem as provided in sections 30-4201 to 30-4210 to advocate for the best interests of the person alleged to be incapacitated.

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

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

(e) At any hearing conducted under this section, the court may designate one or more standby guardians of the person whose appointment will become effective immediately upon the death, unwillingness or inability to act, resignation, or removal by the court of the initially appointed guardian and upon compliance with any rules promulgated by the Supreme Court. The standby guardian shall have the same powers and duties as the initially appointed guardian. The standby guardian shall receive a copy of the order establishing or modifying the initial guardianship and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court in writing. Upon notification and upon compliance with any rules promulgated by the Supreme Court, the court shall issue new letters of guardianship that

specify that the standby guardianship appointment is permanent. A standby guardian shall complete the training required by section 30-2601.01 at the time or times required by rules promulgated by the Supreme Court or as otherwise provided by order of the county court.

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

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

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

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

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

Sec. 4. Section 30-2628, Reissue Revised Statutes of Nebraska, is amended to read:

30-2628 (a) Except as limited by section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor

child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

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

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

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

(4) If no conservator for the estate of the ward has been appointed, a guardian shall, within thirty days after appointment, prepare and file with the

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

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

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

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

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 30-3854. In acting under the authority of subsection (f) of section 30-3854, the court shall proceed in the same

manner as provided under subdivision (3) of section 30-2637.

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

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

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

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

(d) A guardian shall monitor the ward and his or her care. Monitoring shall, at a minimum, consist of quarterly personal contact with the ward. The guardian shall maintain a written record of each visit. Personal contact may be in person or virtually if such contact allows the guardian to assess the ward

and his or her care. If a guardian is unable to contact a ward, the guardian shall provide the court documentation of the attempts to contact the ward made by the guardian. The requirements of this subsection may be modified or waived by the court upon a request by the guardian.

(e) A guardian shall make all reasonable efforts to provide the ward the ability to attend all hearings relating to his or her guardianship in person or virtually.

(f) A guardian shall not accept an appointment for a permanent guardianship of an individual if the guardian serves as a permanent guardian or conservator for twenty or more individuals. Temporary guardianships or conservatorships shall not count toward such limit.

Sec. 5. Section 30-2636, Reissue Revised Statutes of Nebraska, is amended to read:

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

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem as provided in sections 30-4201 to 30-4210 to advocate for the best interests of the person to be protected. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician

designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

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

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

Sec. 6. Section 30-2655, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(c) A conservator shall not accept an appointment for a conservatorship of an individual if the conservator serves as a permanent guardian or conservator for twenty or more individuals. Temporary conservatorships or guardianships shall not count toward such limit.

(d) The limitation described in subsection (c) of this section shall not apply to a corporate entity serving as a conservator.

Sec. 7. In any judicial proceeding involving the appointment of a guardian or a conservator, the administration of a guardianship or conservatorship, or an accounting for a guardianship or a conservatorship, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party

or from the trust that is the subject of the controversy.

Sec. 8. Original sections 30-2619, 30-2623, 30-2628, 30-2636, and 30-2655, Reissue Revised Statutes of Nebraska, and section 30-2201, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 985 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

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GOVERNOR