

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 920

Introduced by Coash, 27; Ashford, 20; Brasch, 16; Davis, 43; Harms, 48; Lathrop, 12; McGill, 26; Schilz, 47; Seiler, 33; Watermeier, 1.

Read first time January 15, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to guardianship and conservatorship; to amend
2 sections 30-2601.01, 30-2627, and 30-2639, Reissue
3 Revised Statutes of Nebraska, sections 30-2201, 30-2626,
4 30-2630.01, and 30-2640, Revised Statutes Cumulative
5 Supplement, 2012, and section 30-2601, Revised Statutes
6 Supplement, 2013; to adopt the Public Guardianship Act;
7 to harmonize provisions; to provide an operative date;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known
2 and may be cited as the Public Guardianship Act.

3 Sec. 2. The Legislature finds that the present system of
4 obtaining a guardian for a person, which often depends on volunteers,
5 is inadequate when there is no willing and qualified family member or
6 friend, other person, bank, or corporation available or willing to
7 serve as guardian for an individual. The Legislature finds that there
8 is a need to provide guardians and conservators when there is no one
9 suitable or available with priority to serve the needs of the
10 individual. The Legislature intends that establishment of the Office
11 of Public Guardian will provide services for individuals when no
12 private guardian or conservator is available. The Legislature also
13 finds that alternatives to full guardianship and less intrusive means
14 of intervention should always be explored, including, but not limited
15 to, limited guardianship, conservatorship, or the appointment of a
16 payee. It is the intent of the Legislature to provide a public
17 guardian only to those individuals whose needs cannot be met through
18 less intrusive means of intervention. The Legislature finds that:

19 (1) All individuals in need of a guardian or conservator
20 shall have the opportunity to have one appointed for them;

21 (2) The priorities for appointment as set out prior to
22 the operative date of this act in sections 30-2601 to 30-2661 are
23 appropriate in most instances;

24 (3) There are individuals in need of guardians or
25 conservators for whom persons that have priority under the law are

1 unwilling, unable, or inappropriate to become a guardian or
2 conservator;

3 (4) Guardians and conservators currently appointed may
4 not fulfill the assigned duties in a way that protects the individual
5 or, in fact, abuses or neglects the individual; and

6 (5) For those for whom no person is available for
7 appointment as guardian or conservator, the Office of Public Guardian
8 will provide necessary services.

9 Sec. 3. For purposes of the Public Guardianship Act:

10 (1) Council means the Advisory Council on Public
11 Guardianship;

12 (2) Incapacitated person is as defined in section
13 30-2601;

14 (3) Office means the Office of Public Guardian;

15 (4) Private guardian means any person who is not with the
16 office appointed by the court to act as guardian for an incapacitated
17 person;

18 (5) Private conservator means any person or a corporation
19 with general power to serve as trustee who is not with the office
20 appointed by the court to act as conservator for a protected person;

21 (6) Protected person is as defined in section 30-2601;

22 (7) Public Guardian means the director of the office;

23 (8) Successor conservator means a person or entity
24 recruited by the office to become a conservator for a protected
25 person previously served by the office;

1 (9) Successor guardian means a person appointed by the
2 court to succeed the office; and

3 (10) Ward is as defined in section 30-2601.

4 Sec. 4. The office:

5 (1) Shall provide competent individuals, designated as
6 the deputy Public Guardian or an associate public guardian, to carry
7 out the duties of a guardian or conservator when a court appoints the
8 Public Guardian because no other person can be identified or is
9 qualified to serve as guardian or conservator for the incapacitated
10 person or protected person;

11 (2) Shall provide immediate response when a guardian or
12 conservator is needed in an emergency situation;

13 (3) Shall provide an option upon the resignation,
14 removal, or discharge of a guardian or conservator so that there is
15 no lapse in service to the ward or protected person;

16 (4) Shall provide equal access and protection for all
17 individuals in need of guardianship or conservatorship services;

18 (5) Shall promote or provide public education to increase
19 the awareness of the duties of guardians and conservators and
20 encourage more people to serve as private guardians or private
21 conservators;

22 (6) Shall recruit members of the general public or family
23 members to serve as guardians or conservators and provide adequate
24 training and support to enhance their success;

25 (7) Shall act as a resource to persons already serving as

1 guardians or conservators for education, information, and support;

2 (8) Shall safeguard the rights of individuals by
3 exploring all options available to support individuals in the least
4 restrictive manner possible and seek full guardianship or
5 conservatorship only as a last resort; and

6 (9) Shall model the highest standard of practice for
7 guardians and conservators to improve the performance of all
8 guardians and conservators in the state.

9 Sec. 5. The office is created within the judicial branch
10 of government and is directly responsible to the State Court
11 Administrator. The State Court Administrator shall appoint a director
12 of the office who shall be known as the Public Guardian. The Public
13 Guardian shall be hired based on a broad knowledge of human
14 development, sociology, and psychology and shall have business acuity
15 and experience in public education and volunteer recruitment. The
16 Public Guardian shall hire a deputy public guardian and up to twelve
17 associate public guardians who shall serve at the pleasure of the
18 Public Guardian and perform such duties as assigned by the Public
19 Guardian. The Public Guardian shall assume all the duties and
20 responsibilities of a guardian and conservator for any individual
21 appointed to his or her supervision and may designate authority to
22 act on his or her behalf to the deputy public guardian and associate
23 public guardians. The Public Guardian shall administer public
24 guardianship and shall serve as staff to the council. The Public
25 Guardian may hire support staff as required.

1 Sec. 6. The Advisory Council on Public Guardianship is
2 created. The council shall be appointed by the State Court
3 Administrator, be comprised of individuals from a variety of
4 disciplines who are knowledgeable in guardianship and
5 conservatorship, and be selected to be representative of the
6 geographical and cultural diversity of the state and to reflect
7 gender fairness. The council shall consist of eleven voting members.
8 The members shall include a representative of the Nebraska County
9 Court Judges Association, an attorney licensed to practice law in
10 this state, social workers, mental health professionals,
11 professionals with expertise in the aging population, developmental
12 disability professionals, and other interested groups or individuals.
13 The State Court Administrator shall not be restricted to the
14 solicited list of nominees in making the appointments.

15 Sec. 7. The initial members of the council shall be
16 appointed for staggered terms of one, two, or three years. All
17 subsequent appointments shall be made for terms of three years. Any
18 vacancy on the council shall be filled in the same manner in which
19 the original appointment was made and shall last for the duration of
20 the term vacated. Appointments to the council shall be made within
21 ninety days after the operative date of this act. The council shall
22 select a chairperson, a vice-chairperson, and such other officers as
23 it deems necessary.

24 Sec. 8. (1) The council shall advise the Public Guardian
25 on the administration of public guardianship.

1 (2) The council shall meet at least four times per year
2 and at other times deemed necessary to perform its functions. Members
3 of the council shall be reimbursed for their actual and necessary
4 expenses as provided in sections 81-1174 to 81-1177.

5 Sec. 9. Consistent with the purposes and objectives of
6 the Public Guardianship Act and in consultation with the council, the
7 Public Guardian shall:

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

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

12 (3) Prepare a yearly budget for the implementation of the
13 act;

14 (4) Develop guidelines for a sliding scale of fees to be
15 charged for public guardianship services;

16 (5) Maintain, in conjunction with private and other
17 public resources, a curricula for training sessions to be made
18 available for successor guardians and conservators and private
19 guardians and conservators;

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

22 (a) Helping guardians understand their ward's
23 disabilities and conservators understand their fiduciary duties with
24 respect to their protected person;

25 (b) Helping guardians foster increased independence on

1 the part of their ward;

2 (c) Helping guardians with the preparation and revision
3 of guardianship plans and reports and conservators with their
4 accountings; and

5 (d) Advising guardians and conservators on ways to secure
6 rights, benefits, and services to which their wards are entitled;

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

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

12 Sec. 10. The Public Guardian, the deputy public guardian,
13 an associate public guardian, a staff member of the office, or a
14 member of the council shall not be liable for civil damages for any
15 statement or decision made in the process of public guardianship or
16 conservatorship unless such person acted in a manner exhibiting
17 willful or wanton misconduct.

18 Sec. 11. The Supreme Court, upon recommendation by the
19 Public Guardian, in consultation with the council, shall promulgate
20 rules to carry out the Public Guardianship Act.

21 Sec. 12. The Public Guardian shall report to the State
22 Court Administrator as directed by the State Court Administrator. The
23 Public Guardian shall report annually to the Chief Justice of the
24 Supreme Court and the Legislature on the implementation of the Public
25 Guardianship Act on or before January 1 of each year. The report to

1 the Legislature shall be made electronically. The report shall
2 include the number and types of guardianships and conservatorships
3 referred to the office, the disposition of those referrals, and the
4 status of the waiting list for public guardianship services.

5 Sec. 13. A court may order appointment of the Public
6 Guardian only after notice to the Public Guardian and a determination
7 that the appointment or order is necessary and will not result in the
8 office having more appointments than permitted by section 16 of this
9 act. The determination of necessity may require the court to
10 ascertain whether there is any other alternative to public
11 guardianship or conservatorship.

12 Sec. 14. Fees shall be charged by the office pursuant to
13 the guidelines developed pursuant to section 9 of this act, unless
14 modified or waived by the court.

15 Sec. 15. (1) Once the Public Guardian is appointed as
16 guardian or conservator, the office shall make a reasonable effort to
17 locate a successor guardian or conservator for the individual from
18 the private sector. By June 31 and January 1 of each year, the office
19 shall file a report with the State Court Administrator describing its
20 efforts to locate a successor private guardian or conservator for the
21 individual.

22 (2) Upon location of a successor private guardian or
23 conservator, the office shall file a motion with the court for
24 termination or modification of the guardianship or conservatorship.
25 Availability of a successor private guardian or conservator shall be

1 deemed a change in the suitability of the office for carrying out its
2 powers and duties under section 4 of this act.

3 Sec. 16. The Public Guardian may accept appointments for
4 individuals not to exceed an average of forty individuals per
5 associate public guardian hired by the office. When the average has
6 been reached, the Public Guardian shall not accept further
7 appointments. The Public Guardian, upon reaching the maximum number
8 of appointments shall forthwith notify the State Court Administrator
9 that the maximum number of appointments has been reached by the
10 office.

11 Sec. 17. (1) When the court appoints the Public Guardian
12 as guardian or conservator for an individual, the Public Guardian,
13 designated deputy public guardian, or associate public guardian
14 immediately succeeds to all powers and duties of a guardian provided
15 in sections 30-2626 and 30-2628, if appointed a guardian, or as a
16 conservator to all powers and duties of a conservator as provided by
17 sections 30-2646, 30-2647, 30-2653, 30-2654, 30-2655, 30-2656, and
18 30-2657, if appointed a conservator.

19 (2) The Public Guardian or designated deputy public
20 guardian or associate public guardian shall:

21 (a) Be considered as an interested person in the welfare
22 of the ward or protected person for purposes of filing a motion for
23 termination or modification of a guardianship or conservatorship;

24 (b) Visit the facility in which the ward or protected
25 person is to be placed if it is proposed that the individual be

1 placed outside his or her home; and

2 (c) Monitor the ward or protected person and his or her
3 care and progress on a continuing basis. Monitoring shall, at a
4 minimum, consist of monthly personal contact with the ward or
5 protected person. The Public Guardian, designated deputy public
6 guardian, or associate public guardian shall maintain a written
7 record of each visit with a ward or protected person. The office,
8 through its designees, shall maintain periodic contact with all
9 individuals and agencies, public or private, providing care or
10 related services to the ward or protected person.

11 Sec. 18. The Public Guardian may be discharged by a court
12 with respect to any of the authority granted over a ward or protected
13 person upon petition of such individual, any interested person, or
14 the Public Guardian or upon the court's own motion when it appears
15 that the services of the Public Guardian are no longer necessary.

16 Sec. 19. Section 30-2201, Revised Statutes Cumulative
17 Supplement, 2012, is amended to read:

18 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,
19 and 30-4001 to 30-4045 and sections 1 to 18 of this act shall be
20 known and may be cited as the Nebraska Probate Code.

21 Sec. 20. Section 30-2601, Revised Statutes Supplement,
22 2013, is amended to read:

23 30-2601 Unless otherwise apparent from the context, in
24 the Nebraska Probate Code:

25 (1) Incapacitated person means any person who is impaired

1 by reason of mental illness, mental deficiency, physical illness or
2 disability, chronic use of drugs, chronic intoxication, or other
3 cause (except minority) to the extent that the person lacks
4 sufficient understanding or capacity to make or communicate
5 responsible decisions concerning himself or herself;

6 (2) A protective proceeding is a proceeding under the
7 provisions of section 30-2630 to determine that a person cannot
8 effectively manage or apply his or her estate to necessary ends,
9 either because the person lacks the ability or is otherwise
10 inconvenienced, or because the person is a minor, and to secure
11 administration of the person's estate by a conservator or other
12 appropriate relief;

13 (3) A protected person is a minor or other person for
14 whom a conservator has been appointed or other protective order has
15 been made;

16 (4) A ward is a person for whom a guardian has been
17 appointed. A minor ward is a minor for whom a guardian has been
18 appointed solely because of minority;

19 (5) Full guardianship means the guardian has been granted
20 all powers which may be conferred upon a guardian by law;

21 (6) Guardian means any person appointed to protect an
22 incapacitated person and may include the Office of Public Guardian;

23 (7) Public Guardian is as defined in section 3 of this
24 act;

25 ~~(6)-(8)~~ Limited guardianship means any guardianship which

1 is not a full guardianship; and

2 (9) Conservator means any person appointed to protect a
3 protected person and may include the Public Guardian; and

4 ~~(7)~~(10) For purposes of article 26 of the Nebraska
5 Probate Code, interested person means children, spouses, those
6 persons who would be the heirs if the ward or person alleged to be
7 incapacitated died without leaving a valid will who are adults and
8 any trustee of any trust executed by the ward or person alleged to be
9 incapacitated. After the death of a ward, interested person also
10 includes the personal representative of a deceased ward's estate, the
11 deceased ward's heirs in an intestate estate, and the deceased ward's
12 devisees in a testate estate. The meaning of interested person as it
13 relates to particular persons may vary from time to time and must be
14 determined according to the particular purposes of, and matter
15 involved in, any proceeding. If there are no persons identified as
16 interested persons above, then interested person shall also include
17 any person or entity named as a devisee in the most recently executed
18 will of the ward or person alleged to be incapacitated.

19 Sec. 21. Section 30-2601.01, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 30-2601.01 ~~The State Court Administrator Office of Public~~
22 Guardian shall approve training curricula for persons appointed as
23 guardians and conservators. Such training curricula shall include,
24 but not be limited to:

25 (1) The rights of wards under sections 30-2601 to 30-2661

- 1 specifically and under the laws of the United States generally;
- 2 (2) The duties and responsibilities of guardians;
- 3 (3) Reporting requirements;
- 4 (4) Least restrictive options in the areas of housing,
5 medical care, and psychiatric care; and
- 6 (5) Resources to assist guardians in fulfilling their
7 duties.

8 Sec. 22. Section 30-2626, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 30-2626 (a) If a person alleged to be incapacitated has
11 no guardian and an emergency exists, the court may, pending notice
12 and hearing, exercise the power of a guardian or enter an ex parte
13 order appointing a temporary guardian to address the emergency. The
14 order and letters of temporary guardianship shall specify the powers
15 and duties of the temporary guardian limiting the powers and duties
16 to those necessary to address the emergency.

17 (b) When the court takes action to exercise the powers of
18 a guardian or to appoint a temporary guardian under subsection (a) of
19 this section, an expedited hearing shall be held if requested by the
20 person alleged to be incapacitated, or by any interested person, if
21 the request is filed more than ten business days prior to the date
22 set for the hearing on the petition for appointment of the guardian.
23 If an expedited hearing is to be held, the hearing shall be held
24 within ten business days after the request is received. At the
25 hearing on the temporary appointment, the petitioner shall have the

1 burden of showing by a preponderance of the evidence that temporary
2 guardianship continues to be necessary to address the emergency
3 situation. Unless the person alleged to be incapacitated has counsel
4 of his or her own choice, the court may appoint an attorney to
5 represent the person alleged to be incapacitated at the hearing as
6 provided in section 30-2619.

7 (c) If an expedited hearing is requested, notice shall be
8 served as provided in section 30-2625. The notice shall specify that
9 a temporary guardian has been appointed and shall be given at least
10 twenty-four hours prior to the expedited hearing.

11 (d) At the expedited hearing, the court may render a
12 judgment authorizing the temporary guardianship to continue beyond
13 the original ten-day period. The judgment shall prescribe the
14 specific powers and duties of the temporary guardian in the letters
15 of temporary guardianship and shall be effective for a single ninety-
16 day period. For good cause shown, the court may extend the temporary
17 guardianship for successive ninety-day periods.

18 (e) The temporary guardianship shall terminate at the end
19 of the ninety-day period in which the temporary guardianship is valid
20 or at any time prior thereto if the court deems the circumstances
21 leading to the order for temporary guardianship no longer exist or if
22 an order has been entered as a result of a hearing pursuant to
23 section 30-2619 which has been held during the ninety-day period.

24 (f) If the court denies the request for the ex parte
25 order, the court may, in its discretion, enter an order for an

1 expedited hearing pursuant to subsections (b) through (e) of this
2 section.

3 (g) If the petitioner requests the entry of an order of
4 temporary guardianship pursuant to subsection (a) of this section
5 without requesting an ex parte order, the court may hold an expedited
6 hearing pursuant to subsections (b) through (e) of this section.

7 (h) If an appointed guardian is not effectively
8 performing his or her duties and the court further finds that the
9 welfare of the incapacitated person requires immediate action, it
10 may, pending notice and hearing in accordance with section 30-2220,
11 appoint a temporary guardian for the incapacitated person for a
12 specified period not to exceed ninety days. For good cause shown, the
13 court may extend the temporary guardianship for successive ninety-day
14 periods. A temporary guardian appointed pursuant to this subsection
15 has only the powers and duties specified in the previously appointed
16 guardian's letters of guardianship, and the authority of any
17 permanent guardian previously appointed by the court is suspended so
18 long as a temporary guardian has authority.

19 (i) A temporary guardian may be removed at any time. A
20 temporary guardian shall make any report the court requires, except
21 that a temporary guardian shall not be required to provide the check
22 or report under section 30-2602.02. In other respects the provisions
23 of the Nebraska Probate Code concerning guardians apply to temporary
24 guardians.

25 (j) The court may appoint the Public Guardian as the

1 temporary guardian when there is no suitable guardian available.

2 Sec. 23. Section 30-2627, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

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

5 (1) A person nominated most recently by one of the
6 following methods:

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

9 (ii) A person acting under a power of attorney or durable
10 power of attorney; or

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

14 (2) The spouse of the incapacitated person;

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

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

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

22 (6) A person nominated by the person who is caring for
23 him or her or paying benefits to him or her; or -

24 (7) The Public Guardian.

25 (c) When appointing a guardian, the court shall take into

1 consideration the expressed wishes of the allegedly incapacitated
2 person. The court, acting in the best interest of the incapacitated
3 person, may pass over a person having priority and appoint a person
4 having lower priority or no priority. With respect to persons having
5 equal priority, the court shall select the person it deems best
6 qualified to serve.

7 (d) In its order of appointment, unless waived by the
8 court, the court shall require any person appointed as guardian to
9 successfully complete within three months of such appointment a
10 training program approved by the ~~State Court Administrator. Office of~~
11 Public Guardian. If the person appointed as guardian does not
12 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
15 an amount and conditioned in accordance with the provisions of
16 sections 30-2640 and 30-2641. The Public Guardian shall not be
17 required to post bond.

18 Sec. 24. Section 30-2630.01, Revised Statutes Cumulative
19 Supplement, 2012, is amended to read:

20 30-2630.01 (a) If a person alleged to be in need of
21 protection under section 30-2630 has no conservator and an emergency
22 exists, the court may, pending notice and hearing, exercise the power
23 of a conservator or enter an emergency protective order appointing a
24 temporary conservator, who may be the Public Guardian, to address the
25 emergency.

1 (b) When the court takes action to exercise the powers of
2 a conservator or to appoint a temporary conservator under subsection
3 (a) of this section, an expedited hearing shall be held if requested
4 by the person alleged to be in need of protection, or by any
5 interested person, if the request is filed more than ten business
6 days prior to the date set for the hearing on the petition for
7 appointment of the conservator. If an expedited hearing is to be
8 held, the hearing shall be held within ten business days after the
9 request is received. At the hearing on the temporary appointment, the
10 petitioner shall have the burden of showing by a preponderance of the
11 evidence that temporary conservatorship continues to be necessary to
12 address the emergency situation. Unless the person alleged to be in
13 need of protection has counsel of his or her own choice, the court
14 may appoint an attorney to represent the person at the hearing as
15 provided in section 30-2636.

16 (c) If an expedited hearing is requested, notice shall be
17 served as provided in section 30-2634. The notice shall specify that
18 a temporary conservator has been appointed and shall be given at
19 least twenty-four hours prior to the expedited hearing.

20 (d) At the expedited hearing, the court may render a
21 judgment authorizing the temporary conservatorship to continue beyond
22 the original ten-day period. The judgment shall prescribe the
23 specific powers and duties of the temporary conservator in the
24 letters of temporary conservatorship and shall be effective for a
25 ninety-day period. For good cause shown, the court may extend the

1 temporary conservatorship for successive ninety-day periods.

2 (e) The temporary conservatorship shall terminate at the
3 end of the ninety-day period in which the temporary conservatorship
4 is valid or at any time prior thereto if the court deems the
5 circumstances leading to the order for temporary conservatorship no
6 longer exist or if an order has been entered as a result of a hearing
7 pursuant to section 30-2636 which has been held during the ninety-day
8 period.

9 (f) If the court denies the request for the ex parte
10 order, the court may, in its discretion, enter an order for an
11 expedited hearing pursuant to subsections (b) through (e) of this
12 section.

13 (g) If the petitioner requests the entry of an order of
14 temporary conservatorship pursuant to subsection (a) of this section
15 without requesting an ex parte order, the court may hold an expedited
16 hearing pursuant to subsections (b) through (e) of this section.

17 (h) A temporary conservator may be removed at any time. A
18 temporary conservator shall make any report the court requires,
19 except that a temporary conservator shall not be required to provide
20 the national criminal history record check and report under section
21 30-2602.02. In other respects the provisions of the Nebraska Probate
22 Code concerning conservators apply to temporary conservators.

23 Sec. 25. Section 30-2639, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 30-2639 (a) The court may appoint an individual, ~~or~~a

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

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

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

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

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

25 (iii) A person nominated by an attorney in fact who is

1 given power to nominate in a power of attorney or a durable power of
2 attorney executed by the protected person;

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

6 (3) An individual or corporation nominated by the
7 protected person if he or she is fourteen or more years of age and
8 has, in the opinion of the court, sufficient mental capacity to make
9 an intelligent choice;

10 (4) The spouse of the protected person;

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

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

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

17 (8) A person nominated by the person who is caring for
18 him or her or paying benefits to him or her; or -

19 (9) The Public Guardian.

20 (c) When appointing a conservator, the court shall take
21 into consideration the expressed wishes of the person to be
22 protected. A person having priority listed in subdivision (2), (4),
23 (5), (6), or (7) of subsection (b) of this section may nominate in
24 writing a person to serve in his or her stead. With respect to
25 persons having equal priority, the court shall select the person it

1 deems best qualified of those willing to serve. The court, acting in
2 the best interest of the protected person, may pass over a person
3 having priority and appoint a person having lower priority or no
4 priority.

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

12 Sec. 26. Section 30-2640, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 30-2640 For estates with a net value of more than ten
15 thousand dollars, the bond for a conservator shall be in the amount
16 of the aggregate capital value of the personal property of the estate
17 in the conservator's control plus one year's estimated income from
18 all sources minus the value of securities and other assets deposited
19 under arrangements requiring an order of the court for their removal.
20 The bond of the conservator shall be conditioned upon the faithful
21 discharge of all duties of the trust according to law, with sureties
22 as the court shall specify. The court, in lieu of sureties on a bond,
23 may accept other security for the performance of the bond, including
24 a pledge of securities or a mortgage of land owned by the
25 conservator. For good cause shown, the court may eliminate the

1 requirement of a bond or decrease or increase the required amount of
2 any such bond previously furnished. The court shall not require a
3 bond if the protected person executed a written, valid power of
4 attorney that specifically nominates a guardian or conservator and
5 specifically does not require a bond. The court shall consider as one
6 of the factors of good cause, when determining whether a bond should
7 be required and the amount thereof, the protected person's choice of
8 any attorney in fact or alternative attorney in fact. No bond shall
9 be required of any financial institution, as that term is defined in
10 subdivision (12) of section 8-101, or any officer, director,
11 employee, or agent of the financial institution serving as a
12 conservator, or any trust company serving as a conservator. The
13 Public Guardian shall not be required to post bond.

14 Sec. 27. This act becomes operative on January 1, 2015.

15 Sec. 28. Original sections 30-2601.01, 30-2627, and
16 30-2639, Reissue Revised Statutes of Nebraska, sections 30-2201,
17 30-2626, 30-2630.01, and 30-2640, Revised Statutes Cumulative
18 Supplement, 2012, and section 30-2601, Revised Statutes Supplement,
19 2013, are repealed.