

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 257**

Introduced By: Lathrop, 12; Adams, 24; Nelson, 6  
Read first time: January 10, 2007  
Committee: Judiciary

A BILL

1 FOR AN ACT relating to guardianship; to amend sections 30-2201,  
2 30-2601, 30-2627, and 30-2639, Revised Statutes Cumulative  
3 Supplement, 2006; to adopt the Public Guardianship Act; to  
4 harmonize provisions; to provide an operative date; and to  
5 repeal the original sections.

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

1           Section 1. Sections 1 to 17 of this act shall be known and  
2 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 to serve as  
7 guardian for an individual. The Legislature finds that there is a  
8 need to provide conservators when there is no one suitable or  
9 available with priority to serve the needs of the individual. The  
10 Legislature intends that establishment of the Office of Public  
11 Guardian will provide services for individuals when no private  
12 guardian or conservator is available. The Legislature finds that  
13 alternatives to full guardianship and less intrusive means of  
14 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 persons whose needs cannot be met through less  
18 intrusive means of intervention. The Legislature finds that:

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

21           (2) The priorities for appointment as set out prior to the  
22 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  
26 unwilling, unable, or inappropriate to become a guardian or  
27 conservator;

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

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

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

8           (1) Council means the Advisory Council on Public  
9 Guardianship;

10          (2) Individual means an incapacitated person as defined in  
11 section 30-2601;

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

13          (4) Private guardian means any person or organization  
14 appointed to act as guardian for an individual by the court who is not  
15 with the office;

16          (5) Public Guardian means the director of the office; and

17          (6) Replacement guardian or conservator means a person  
18 recruited by the office to become guardian or conservator for an  
19 individual previously served by the office.

20          Sec. 4. The office shall:

21          (1) Provide well-trained, competent individuals, designated  
22 as the deputy public guardian or an associate public guardian, to  
23 carry out the duties of a guardian or conservator when the court  
24 appoints the Public Guardian because no other person can be  
25 identified or is qualified to serve as guardian or conservator for  
26 the individual;

27          (2) Provide immediate response when a guardian or

1 conservator is needed in an emergency situation;

2 (3) Provide an option upon the resignation, removal, or  
3 discharge of a guardian or conservator so that there is no lapse in  
4 service to the individual;

5 (4) Provide equal access and protection for all individuals  
6 in need of guardianship or conservatorship services;

7 (5) Promote or provide public education to increase the  
8 awareness of the duties of guardians and conservators and encourage  
9 more people to serve as private guardians or conservators;

10 (6) Recruit members of the general public or family members  
11 to serve as guardians or conservators and provide adequate training  
12 and support to insure their success;

13 (7) Act as a resource to persons already serving as  
14 guardians or conservators for education, information, and support;

15 (8) Safeguard the rights of individuals by exploring all  
16 options available to support that individual in the least restrictive  
17 manner possible and seek guardianship or conservatorship only as a  
18 last resort; and

19 (9) Model the highest standard of practice for guardians  
20 and conservators to improve the performance of all guardians and  
21 conservators in the state.

22 Sec. 5. The office is created within the judicial branch of  
23 government and is directly responsible to the Supreme Court. The  
24 Supreme Court shall appoint a director of the office who shall be  
25 known as the Public Guardian. The Public Guardian shall be hired  
26 based on a broad knowledge of human development, sociology, and  
27 psychology and shall have business acuity and experience in public

1 education and volunteer recruitment. The Public Guardian shall hire a  
2 deputy public guardian and associate public guardians who shall serve  
3 at the pleasure of the Public Guardian and perform such duties as  
4 assigned by the Public Guardian. The Public Guardian shall assume all  
5 the duties and responsibilities of a guardian and conservator for any  
6 individual appointed to his or her supervision and may designate  
7 authority to act on his or her behalf to the deputy public guardian  
8 and associate public guardians. The Public Guardian shall administer  
9 public guardianship and shall serve as staff to the council. The  
10 Public Guardian may hire support staff as required.

11 Sec. 6. The Advisory Council on Public Guardianship is  
12 created. The council shall be appointed by the Chief Justice of the  
13 Supreme Court and be comprised of individuals from a variety of  
14 disciplines who are knowledgeable in guardianship and conservatorship  
15 and selected to be representative of the geographical and cultural  
16 diversity of the state and to reflect gender fairness. The council  
17 shall consist of eleven voting members. The membership shall include  
18 a representative from the Nebraska County Court Judges Association,  
19 the Nebraska State Bar Association, social workers, mental health  
20 professionals, developmental disability professionals, and other  
21 interested groups or individuals. The Chief Justice shall not be  
22 restricted to the solicited list of nominees in making the  
23 appointments.

24 Sec. 7. The initial members of the council shall be  
25 appointed for terms of one, two, or three years. All subsequent  
26 appointments shall be made for terms of three years. Any vacancy on  
27 the council shall be filled in the same manner in which the original

1 appointment was made and shall last for the duration of the term  
2 vacated. Appointments to the council shall be made within ninety days  
3 after the operative date of this act. The council shall select a  
4 chairperson, a vice-chairperson, and such other officers as it deems  
5 necessary.

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

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

12 (3) The council may appoint task forces to carry out its  
13 work. Task force members shall have knowledge of, responsibility for,  
14 or interest in an area related to the duties of the council.

15 Sec. 9. Consistent with the purposes and objectives of the  
16 Public Guardianship Act and in consultation with the council, the  
17 Public Guardian shall:

18 (1) Develop a uniform system of reporting and collecting  
19 statistical data regarding guardianship and conservatorship;

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

22 (3) Prepare a yearly budget for the implementation of the  
23 act;

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

26 (5) Develop and maintain, in conjunction with private and  
27 other public resources, a curricula for training sessions to be made

1 available for replacement guardians and conservators and private  
2 guardians and conservators;

3 (6) Establish and maintain training programs available  
4 statewide to offer the training curricula for interested parties to  
5 include:

6 (a) Helping guardians understand their ward's disabilities  
7 and conservators understand their fiduciary duties;

8 (b) Helping guardians foster increased independence on the  
9 part of their ward;

10 (c) Helping guardians with the preparation and revision of  
11 guardianship plans and reports and conservators with their  
12 accountings; and

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

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

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

20 Sec. 10. The Public Guardian, the deputy public guardian,  
21 an associate public guardian, a staff member of the office, or a  
22 member of the council shall not be liable for civil damages for any  
23 statement or decision made in the process of public guardianship or  
24 conservatorship unless such person acted in a manner exhibiting  
25 willful or wanton misconduct.

26 Sec. 11. The Supreme Court, upon recommendation by the  
27 Public Guardian, in consultation with the council, shall promulgate

1 rules to carry out the Public Guardianship Act.

2 Sec. 12. The Public Guardian shall report annually to the  
3 Chief Justice, the Governor, and the Legislature on the implementation  
4 of the Public Guardianship Act. The report shall include the number  
5 and types of guardianships and conservatorships referred to the  
6 office, the disposition of those referrals, and the status of the  
7 waiting list for public guardianship services.

8 Sec. 13. A court may order appointment of the Public  
9 Guardian only after notice to the Public Guardian and a determination  
10 that the appointment is necessary and the appointment will not result  
11 in the office having more appointments than permitted by section 15  
12 of this act. The determination of necessity may require the court to  
13 ascertain whether there is any other alternative to public  
14 guardianship or conservatorship. Fees shall be charged by the office  
15 pursuant to the guidelines developed pursuant to section 9 of this  
16 act, unless modified by the court.

17 Sec. 14. (1) Once the Public Guardian is appointed as  
18 guardian or conservator, the office shall make a reasonable effort to  
19 locate a suitable guardian or conservator for the individual from the  
20 private sector. Annually, the office shall file a report with the  
21 Supreme Court describing its efforts to locate a replacement private  
22 guardian or conservator for the individual.

23 (2) Upon location of a suitable replacement private  
24 guardian or conservator, the office shall file a motion with the court  
25 for termination or modification of the guardianship or  
26 conservatorship. Availability of a suitable replacement private  
27 guardian or conservator shall be deemed a change in the suitability



1 of the office for carrying out its powers and duties under section 4  
2 of this act.

3 Sec. 15. 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.

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

16 (2) The Public Guardian or designated deputy public  
17 guardian or associate public guardian shall:

18 (a) Be considered as a person interested in the welfare of  
19 the individual for purposes of filing a motion for termination or  
20 modification of a guardianship or conservatorship;

21 (b) Visit the facility in which the individual is to be  
22 placed if it is proposed that the individual be placed outside his or  
23 her home;

24 (c) Monitor the individual and the individual's care and  
25 progress on a continuing basis. Monitoring shall, at a minimum,  
26 consist of monthly personal contact with the individual. The office  
27 shall maintain a written record of each visit with an individual. A

1 copy of this record shall be filed with the court as a part of the  
2 annual report. The office, through its designees, shall maintain  
3 periodic contact with all individuals and agencies, public or  
4 private, providing care or related services to the individual.

5 Sec. 17. The Public Guardian may be discharged by a court  
6 with respect to any of the authority granted over an individual upon  
7 petition of the individual, any interested person, or the Public  
8 Guardian or upon the court's own motion when it appears that the  
9 services of the Public Guardian are no longer necessary, despite the  
10 fact the individual has not been, and may never be, restored to  
11 competency.

12 Sec. 18. Section 30-2201, Revised Statutes Cumulative  
13 Supplement, 2006, is amended to read:

14 30-2201. Sections 30-2201 to 30-2902 and sections 1 to 17  
15 of this act shall be known and may be cited as the Nebraska Probate  
16 Code.

17 Sec. 19. Section 30-2601, Revised Statutes Cumulative  
18 Supplement, 2006, is amended to read:

19 30-2601. Unless otherwise apparent from the context, in the  
20 Nebraska Probate Code:

21 (1) Incapacitated person means any person who is impaired by  
22 reason of mental illness, mental deficiency, physical illness or  
23 disability, chronic use of drugs, chronic intoxication, or other cause  
24 (except minority) to the extent that the person lacks sufficient  
25 understanding or capacity to make or communicate responsible decisions  
26 concerning himself or herself;

27 (2) A protective proceeding is a proceeding under the

1 provisions of section 30-2630 to determine that a person cannot  
2 effectively manage or apply his or her estate to necessary ends,  
3 either because the person lacks the ability or is otherwise  
4 inconvenienced, or because the person is a minor, and to secure  
5 administration of the person's estate by a conservator or other  
6 appropriate relief;

7 (3) A protected person is a minor or other person for whom a  
8 conservator has been appointed or other protective order has been  
9 made;

10 (4) A ward is a person for whom a guardian has been  
11 appointed. A minor ward is a minor for whom a guardian has been  
12 appointed solely because of minority;

13 (5) Full guardianship means the guardian has been granted  
14 all powers which may be conferred upon a guardian by law; ~~and~~

15 (6) Guardian means any person appointed to protect a ward  
16 and may include the Office of Public Guardian; and

17 ~~(6)~~ (7) Limited guardianship means any guardianship  
18 which is not a full guardianship.

19 Sec. 20. Section 30-2627, Revised Statutes Cumulative  
20 Supplement, 2006, is amended to read:

21 30-2627. (a) Any competent person, ~~or~~ a suitable  
22 institution, or the Office of Public Guardian may be appointed  
23 guardian of a person alleged to be incapacitated, except that it shall  
24 be unlawful for any agency providing residential care in an  
25 institution or community-based program, or any owner, part owner,  
26 manager, administrator, employee, or spouse of an owner, part owner,  
27 manager, administrator, or employee of any nursing home, room and

1 board home, assisted-living facility, or institution engaged in the  
2 care, treatment, or housing of any person physically or mentally  
3 handicapped, infirm, or aged to be appointed guardian of any such  
4 person residing, being under care, receiving treatment, or being  
5 housed in any such home, facility, or institution within the State of  
6 Nebraska. Nothing in this subsection shall prevent the spouse, adult  
7 child, parent, or other relative of the person alleged to be  
8 incapacitated from being appointed guardian or prevent the guardian  
9 officer for one of the Nebraska veterans homes as provided in section  
10 80-327 from being appointed guardian or conservator for the person  
11 alleged to be incapacitated. It shall be unlawful for any county  
12 attorney or deputy county attorney appointed as guardian for a person  
13 alleged to be incapacitated to circumvent his or her duties or the  
14 rights of the ward pursuant to the Nebraska Mental Health Commitment  
15 Act by consenting to inpatient or outpatient psychiatric treatment  
16 over the objection of the ward.

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

21 (1) A person nominated most recently by one of the following  
22 methods:

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

25 (ii) A person acting under a power of attorney or durable  
26 power of attorney; or

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

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

3 (2) The spouse of the incapacitated person;

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

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

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

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

12 (7) The Office of Public Guardian.

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

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

27 (e) The court may require a guardian to furnish a bond in an

1 amount and conditioned in accordance with the provisions of sections  
2 30-2640 and 30-2641.

3 Sec. 21. Section 30-2639, Revised Statutes Cumulative  
4 Supplement, 2006, is amended to read:

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

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

24 (1) A person nominated most recently by one of the following  
25 methods:

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

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

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

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

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

13 (4) The spouse of the protected person;

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

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

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

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

22 (9) The Office of Public Guardian.

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

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

5 (d) In its order of appointment, unless waived by the court,  
6 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. If the  
9 person appointed as conservator does not complete the training  
10 program, the court shall issue an order to show cause why such person  
11 should not be removed as conservator.

12 Sec. 22. This act becomes operative on January 1, 2008.

13 Sec. 23. Original sections 30-2201, 30-2601, 30-2627, and  
14 30-2639, Revised Statutes Cumulative Supplement, 2006, are repealed.