

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 85

Introduced by Karpisek, 32; Coash, 27; Council, 11.

Read first time January 06, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adult guardianship jurisdiction; to amend
2 sections 30-2603, 30-2607, 30-2610, 30-2611, 30-2616,
3 30-2636, 30-2639, and 30-2647, Reissue Revised Statutes
4 of Nebraska; to adopt the Nebraska Uniform Adult
5 Guardianship and Protective Proceedings Jurisdiction Act;
6 to harmonize provisions; to provide operative dates; and
7 to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 23 of this act shall be known
2 and may be cited as the Nebraska Uniform Adult Guardianship and
3 Protective Proceedings Jurisdiction Act.

4 Sec. 2. In the Nebraska Uniform Adult Guardianship and
5 Protective Proceedings Jurisdiction Act:

6 (1) Adult means an individual who has attained eighteen
7 years of age;

8 (2) Conservator means a person appointed by the court to
9 administer the property of an adult, including a person appointed
10 under the Nebraska Probate Code for an adult;

11 (3) Guardian means a person appointed by the court to
12 make decisions regarding the person of an adult, including a person
13 appointed under the Nebraska Probate Code for an adult;

14 (4) Guardianship order means an order appointing a
15 guardian;

16 (5) Guardianship proceeding means a judicial proceeding
17 in which an order for the appointment of a guardian is sought or has
18 been issued;

19 (6) Incapacitated person means an adult for whom a
20 guardian has been appointed;

21 (7) Party means the respondent, petitioner, guardian,
22 conservator, or any other person allowed by the court to participate
23 in a guardianship or protective proceeding;

24 (8) Person, except in the term incapacitated person or
25 protected person, means an individual, corporation, business trust,

1 estate, trust, partnership, limited liability company, association,
2 joint venture, public corporation, government or governmental
3 subdivision, agency, or instrumentality, or any other legal or
4 commercial entity;

5 (9) Protected person means an adult for whom a protective
6 order has been issued;

7 (10) Protective order means an order appointing a
8 conservator or other order related to management of an adult's
9 property;

10 (11) Protective proceeding means a judicial proceeding in
11 which a protective order is sought or has been issued;

12 (12) Record means information that is inscribed on a
13 tangible medium or that is stored in an electronic or other medium
14 and is retrievable in perceivable form;

15 (13) Respondent means an adult for whom a protective
16 order or the appointment of a guardian is sought; and

17 (14) State means a state of the United States, the
18 District of Columbia, Puerto Rico, the United States Virgin Islands,
19 a federally recognized Indian tribe, or any territory or insular
20 possession subject to the jurisdiction of the United States.

21 Sec. 3. A court of this state may treat a foreign country
22 as if it were a state for the purpose of applying sections 1 to 17
23 and 21 to 23 of this act.

24 Sec. 4. (1) A court of this state may communicate with a
25 court in another state concerning a proceeding arising under the

1 Nebraska Uniform Adult Guardianship and Protective Proceedings
2 Jurisdiction Act. The court may allow the parties to participate in
3 the communication. Except as otherwise provided in subsection (2) of
4 this section, the court shall make a record of the communication. The
5 record may be limited to the fact that the communication occurred.

6 (2) Courts may communicate concerning schedules,
7 calendars, court records, and other administrative matters without
8 making a record.

9 Sec. 5. (1) In a guardianship or protective proceeding in
10 this state, a court of this state may request the appropriate court
11 of another state to do any of the following:

12 (a) Hold an evidentiary hearing;

13 (b) Order a person in that state to produce evidence or
14 give testimony pursuant to procedures of that state;

15 (c) Order that an evaluation or assessment be made of the
16 respondent;

17 (d) Order any appropriate investigation of a person
18 involved in a proceeding;

19 (e) Forward to the court of this state a certified copy
20 of the transcript or other record of a hearing under subdivision (a)
21 of this subsection or any other proceeding, any evidence otherwise
22 produced under subdivision (b) of this subsection, and any evaluation
23 or assessment prepared in compliance with an order under subdivision
24 (c) or (d) of this subsection;

25 (f) Issue any order necessary to assure the appearance in

1 the proceeding of a person whose presence is necessary for the court
2 to make a determination, including the respondent or the
3 incapacitated or protected person; or

4 (g) Issue an order authorizing the release of medical,
5 financial, criminal, or other relevant information in that state,
6 including protected health information as defined in 45 C.F.R.
7 section 164.504, as the section existed on January 1, 2010.

8 (2) If a court of another state in which a guardianship
9 or protective proceeding is pending requests assistance of the kind
10 provided in subsection (1) of this section, a court of this state has
11 jurisdiction for the limited purpose of granting the request or
12 making reasonable efforts to comply with the request.

13 Sec. 6. (1) In a guardianship or protective proceeding,
14 in addition to other procedures that may be available, testimony of a
15 witness who is located in another state may be offered by deposition
16 or other means allowable in this state for testimony taken in another
17 state. The court on its own motion may order that the testimony of a
18 witness be taken in another state and may prescribe the manner in
19 which and the terms upon which the testimony is to be taken.

20 (2) In a guardianship or protective proceeding, a court
21 in this state may permit a witness located in another state to be
22 deposed or to testify by telephone or audiovisual or other electronic
23 means. A court of this state shall cooperate with the court of the
24 other state in designating an appropriate location for the deposition
25 or testimony.

1 (3) Documentary evidence transmitted from another state
2 to a court of this state by technological means that do not produce
3 an original writing may not be excluded from evidence on an objection
4 based on the best evidence rule.

5 Sec. 7. (1) For purposes of sections 7 to 15 of this act:

6 (a) Emergency means a circumstance that likely will
7 result in substantial harm to a respondent's health, safety, or
8 welfare, and for which the appointment of a guardian is necessary
9 because no other person has authority and is willing to act on the
10 respondent's behalf;

11 (b) Home state means the state in which the respondent
12 was physically present, including any period of temporary absence,
13 for at least six consecutive months immediately before the filing of
14 a petition for a protective order or the appointment of a guardian
15 or, if none, the state in which the respondent was physically
16 present, including any period of temporary absence, for at least six
17 consecutive months ending within the six months prior to the filing
18 of the petition; and

19 (c) Significant-connection state means a state, other
20 than the home state, with which a respondent has a significant
21 connection other than mere physical presence and in which substantial
22 evidence concerning the respondent is available.

23 (2) In determining under section 9 of this act and
24 subsection (5) of section 16 of this act whether a respondent has a
25 significant connection with a particular state, the court shall

1 consider:

2 (a) The location of the respondent's family and other
3 persons required to be notified of the guardianship or protective
4 proceeding;

5 (b) The length of time the respondent at any time was
6 physically present in the state and the duration of any absence;

7 (c) The location of the respondent's property; and

8 (d) The extent to which the respondent has ties to the
9 state such as voting registration, state or local tax return filing,
10 vehicle registration, driver's license, social relationship, and
11 receipt of services.

12 Sec. 8. Sections 7 to 15 of this act provide the
13 exclusive jurisdictional basis for a court of this state to appoint a
14 guardian or issue a protective order for an adult.

15 Sec. 9. A court of this state has jurisdiction to appoint
16 a guardian or issue a protective order for a respondent if:

17 (1) This state is the respondent's home state;

18 (2) On the date the petition is filed, this state is a
19 significant-connection state and:

20 (a) The respondent does not have a home state or a court
21 of the respondent's home state has declined to exercise jurisdiction
22 because this state is a more appropriate forum; or

23 (b) The respondent has a home state, a petition for an
24 appointment or order is not pending in a court of that state or
25 another significant-connection state, and, before the court makes the

1 appointment or issues the order:

2 (i) A petition for an appointment or order is not filed
3 in the respondent's home state;

4 (ii) An objection to the court's jurisdiction is not
5 filed by a person required to be notified of the proceeding; and

6 (iii) The court in this state concludes that it is an
7 appropriate forum under the factors set forth in section 12 of this
8 act;

9 (3) This state does not have jurisdiction under either
10 subdivision (1) or (2) of this section, the respondent's home state
11 and all significant-connection states have declined to exercise
12 jurisdiction because this state is the more appropriate forum, and
13 jurisdiction in this state is consistent with the constitutions of
14 this state and the United States; or

15 (4) The requirements for special jurisdiction under
16 section 10 of this act are met.

17 Sec. 10. (1) A court of this state lacking jurisdiction
18 under section 9 of this act has special jurisdiction to do any of the
19 following:

20 (a) Appoint a guardian in an emergency for a term not
21 exceeding ninety days for a respondent who is physically present in
22 this state;

23 (b) Issue a protective order with respect to real or
24 tangible personal property located in this state; or

25 (c) Appoint a guardian or conservator for an

1 incapacitated or protected person for whom a provisional order to
2 transfer the proceeding from another state has been issued under
3 procedures similar to section 16 of this act.

4 (2) If a petition for the appointment of a guardian in an
5 emergency is brought in this state and this state was not the
6 respondent's home state on the date the petition was filed, the court
7 shall dismiss the proceeding at the request of the court of the home
8 state, if any, whether dismissal is requested before or after the
9 emergency appointment.

10 Sec. 11. Except as otherwise provided in section 10 of
11 this act, a court that has appointed a guardian or issued a
12 protective order consistent with the Nebraska Uniform Adult
13 Guardianship and Protective Proceedings Jurisdiction Act has
14 exclusive and continuing jurisdiction over the proceeding until it is
15 terminated by the court or the appointment or order expires by its
16 own terms.

17 Sec. 12. (1) A court of this state having jurisdiction
18 under section 9 of this act to appoint a guardian or issue a
19 protective order may decline to exercise its jurisdiction if it
20 determines at any time that a court of another state is a more
21 appropriate forum.

22 (2) If a court of this state declines to exercise its
23 jurisdiction under subsection (1) of this section, it shall either
24 dismiss or stay the proceeding. The court may impose any condition
25 the court considers just and proper, including the condition that a

1 petition for the appointment of a guardian or issuance of a
2 protective order be filed promptly in another state.

3 (3) In determining whether it is an appropriate forum,
4 the court shall consider all relevant factors, including:

5 (a) Any expressed preference of the respondent;

6 (b) Whether abuse, neglect, or exploitation of the
7 respondent has occurred or is likely to occur and which state could
8 best protect the respondent from the abuse, neglect, or exploitation;

9 (c) The length of time the respondent was physically
10 present in or was a legal resident of this or another state;

11 (d) The distance of the respondent from the court in each
12 state;

13 (e) The financial circumstances of the respondent's
14 estate;

15 (f) The nature and location of the evidence;

16 (g) The ability of the court in each state to decide the
17 issue expeditiously and the procedures necessary to present evidence;

18 (h) The familiarity of the court of each state with the
19 facts and issues in the proceeding; and

20 (i) If an appointment were made, the court's ability to
21 monitor the conduct of the guardian or conservator.

22 Sec. 13. (1) If at any time a court of this state
23 determines that it acquired jurisdiction to appoint a guardian or
24 issue a protective order because of unjustifiable conduct, the court
25 may:

1 (a) Decline to exercise jurisdiction;

2 (b) Exercise jurisdiction for the limited purpose of
3 fashioning an appropriate remedy to ensure the health, safety, and
4 welfare of the respondent or the protection of the respondent's
5 property or prevent a repetition of the unjustifiable conduct,
6 including staying the proceeding until a petition for the appointment
7 of a guardian or issuance of a protective order is filed in a court
8 of another state having jurisdiction; or

9 (c) Continue to exercise jurisdiction after considering:

10 (i) The extent to which the respondent and all persons
11 required to be notified of the proceedings have acquiesced in the
12 exercise of the court's jurisdiction;

13 (ii) Whether it is a more appropriate forum than the
14 court of any other state under the factors set forth in subsection
15 (3) of section 12 of this act; and

16 (iii) Whether the court of any other state would have
17 jurisdiction under factual circumstances in substantial conformity
18 with the jurisdictional standards of section 9 of this act.

19 (2) If a court of this state determines that it acquired
20 jurisdiction to appoint a guardian or issued a protective order
21 because a party seeking to invoke its jurisdiction engaged in
22 unjustifiable conduct, it may assess against that party necessary and
23 reasonable expenses, including attorney's fees, investigative fees,
24 court costs, communication expenses, witness fees and expenses, and
25 travel expenses. The court may not assess fees, costs, or expenses of

1 any kind against this state or a governmental subdivision, agency, or
2 instrumentality of this state unless authorized by law other than the
3 Nebraska Uniform Adult Guardianship and Protective Proceedings
4 Jurisdiction Act.

5 Sec. 14. If a petition for the appointment of a guardian
6 or issuance of a protective order is brought in this state and this
7 state was not the respondent's home state on the date the petition
8 was filed, in addition to complying with the notice requirements of
9 this state, notice of the petition must be given to those persons who
10 would be entitled to notice of the petition if a proceeding were
11 brought in the respondent's home state. The notice must be given in
12 the same manner as notice is required to be given in this state.

13 Sec. 15. Except for a petition for the appointment of a
14 guardian in an emergency or issuance of a protective order limited to
15 property located in this state under subdivision (1)(a) or (b) of
16 section 10 of this act, if a petition for the appointment of a
17 guardian or issuance of a protective order is filed in this state and
18 in another state and neither petition has been dismissed or
19 withdrawn, the following rules apply:

20 (1) If the court in this state has jurisdiction under
21 section 9 of this act, it may proceed with the case unless a court in
22 another state acquires jurisdiction under provisions similar to
23 section 9 of this act before the appointment or issuance of the
24 order; and

25 (2) If the court in this state does not have jurisdiction

1 under section 9 of this act, whether at the time the petition is
2 filed or at any time before the appointment or issuance of the order,
3 the court shall stay the proceeding and communicate with the court in
4 the other state. If the court in the other state has jurisdiction,
5 the court in this state shall dismiss the petition unless the court
6 in the other state determines that the court in this state is a more
7 appropriate forum.

8 Sec. 16. (1) A guardian or conservator appointed in this
9 state may petition the court to transfer the guardianship or
10 conservatorship to another state.

11 (2) Notice of a petition under subsection (1) of this
12 section must be given to the persons that would be entitled to notice
13 of a petition in this state for the appointment of a guardian or
14 conservator.

15 (3) On the court's own motion or on request of the
16 guardian or conservator, the incapacitated or protected person, or
17 other person required to be notified of the petition, the court shall
18 hold a hearing on a petition filed pursuant to subsection (1) of this
19 section.

20 (4) The court shall issue an order provisionally granting
21 a petition to transfer a guardianship and shall direct the guardian
22 to petition for guardianship in the other state if the court is
23 satisfied that the guardianship will be accepted by the court in the
24 other state and the court finds that:

25 (a) The incapacitated person is physically present in or

1 is reasonably expected to move permanently to the other state;

2 (b) An objection to the transfer has not been made or, if
3 an objection has been made, the objector has not established that the
4 transfer would be contrary to the interests of the incapacitated
5 person; and

6 (c) Plans for care and services for the incapacitated
7 person in the other state are reasonable and sufficient.

8 (5) The court shall issue a provisional order granting a
9 petition to transfer a conservatorship and shall direct the
10 conservator to petition for conservatorship in the other state if the
11 court is satisfied that the conservatorship will be accepted by the
12 court of the other state and the court finds that:

13 (a) The protected person is physically present in or is
14 reasonably expected to move permanently to the other state, or the
15 protected person has a significant connection to the other state
16 considering the factors in subsection (2) of section 7 of this act;

17 (b) An objection to the transfer has not been made or, if
18 an objection has been made, the objector has not established that the
19 transfer would be contrary to the interests of the protected person;
20 and

21 (c) Adequate arrangements will be made for management of
22 the protected person's property.

23 (6) The court shall issue a final order confirming the
24 transfer and terminating the guardianship or conservatorship upon its
25 receipt of:

1 (a) A provisional order accepting the proceeding from the
2 court to which the proceeding is to be transferred which is issued
3 under provisions similar to section 17 of this act; and

4 (b) The documents required to terminate a guardianship or
5 conservatorship in this state.

6 Sec. 17. (1) To confirm transfer of a guardianship or
7 conservatorship transferred to this state under provisions similar to
8 section 16 of this act, the guardian or conservator must petition the
9 court in this state to accept the guardianship or conservatorship.
10 The petition must include a certified copy of the other state's
11 provisional order of transfer.

12 (2) Notice of a petition under subsection (1) of this
13 section must be given to those persons that would be entitled to
14 notice if the petition were a petition for the appointment of a
15 guardian or issuance of a protective order in both the transferring
16 state and this state. The notice must be given in the same manner as
17 notice is required to be given in this state.

18 (3) On the court's own motion or on request of the
19 guardian or conservator, the incapacitated or protected person, or
20 other person required to be notified of the proceeding, the court
21 shall hold a hearing on a petition filed pursuant to subsection (1)
22 of this section.

23 (4) The court shall issue an order provisionally granting
24 a petition filed under subsection (1) of this section unless:

25 (a) An objection is made and the objector establishes

1 that transfer of the proceeding would be contrary to the interests of
2 the incapacitated or protected person; or

3 (b) The guardian or conservator is ineligible for
4 appointment in this state.

5 (5) The court shall issue a final order accepting the
6 proceeding and appointing the guardian or conservator as guardian or
7 conservator in this state upon its receipt from the court from which
8 the proceeding is being transferred of a final order issued under
9 provisions similar to section 16 of this act transferring the
10 proceeding to this state.

11 (6) Not later than ninety days after issuance of a final
12 order accepting transfer of a guardianship or conservatorship, the
13 court shall determine whether the guardianship or conservatorship
14 needs to be modified to conform to the law of this state.

15 (7) In granting a petition under this section, the court
16 shall recognize a guardianship or conservatorship order from the
17 other state, including the determination of the incapacitated or
18 protected person's incapacity and the appointment of the guardian or
19 conservator.

20 (8) The denial by a court of this state of a petition to
21 accept a guardianship or conservatorship transferred from another
22 state does not affect the ability of the guardian or conservator to
23 seek appointment as guardian or conservator in this state under the
24 Nebraska Probate Code if the court has jurisdiction to make an
25 appointment other than by reason of the provisional order of

1 transfer.

2 Sec. 18. If a guardian has been appointed in another
3 state and a petition for the appointment of a guardian is not pending
4 in this state, the guardian appointed in the other state, after
5 giving notice to the appointing court of an intent to register, may
6 register the guardianship order in this state by filing as a foreign
7 judgment in a court, in any appropriate county of this state,
8 certified copies of the order and letters of office.

9 Sec. 19. If a conservator has been appointed in another
10 state and a petition for a protective order is not pending in this
11 state, the conservator appointed in the other state, after giving
12 notice to the appointing court of an intent to register, may register
13 the protective order in this state by filing as a foreign judgment in
14 a court of this state, in any county in which property belonging to
15 the protected person is located, certified copies of the order and
16 letters of office and of any bond.

17 Sec. 20. (1) Upon registration of a guardianship or
18 protective order from another state, the guardian or conservator may
19 exercise in this state all powers authorized in the order of
20 appointment except as prohibited under the laws of this state,
21 including maintaining actions and proceedings in this state and, if
22 the guardian or conservator is not a resident of this state, subject
23 to any conditions imposed upon nonresident parties.

24 (2) A court of this state may grant any relief available
25 under the Nebraska Uniform Adult Guardianship and Protective

1 Proceedings Jurisdiction Act and other law of this state to enforce a
2 registered order.

3 Sec. 21. In applying and construing this uniform act,
4 consideration must be given to the need to promote uniformity of the
5 law with respect to its subject matter among states that enact it.

6 Sec. 22. The Nebraska Uniform Adult Guardianship and
7 Protective Proceedings Jurisdiction Act modifies, limits, and
8 supersedes the federal Electronic Signatures in Global and National
9 Commerce Act, 15 U.S.C. section 7001, as the act existed on January
10 1, 2010, but does not modify, limit, or supersede section 101(c) of
11 the act, 15 U.S.C. section 7001(c), or authorize electronic delivery
12 of any of the notices described in section 103(b) of the act, 15
13 U.S.C. section 7003(b).

14 Sec. 23. (1) The Nebraska Uniform Adult Guardianship and
15 Protective Proceedings Jurisdiction Act applies to guardianship and
16 protective proceedings begun on or after January 1, 2012.

17 (2) Sections 1 to 6 and 16 to 23 of this act apply to
18 proceedings begun before January 1, 2012, regardless of whether a
19 guardianship or protective order has been issued.

20 Sec. 24. Section 30-2603, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 30-2603 Any person under a duty to pay or deliver money
23 or personal property to a minor may perform this duty, in amounts not
24 exceeding twenty-five thousand dollars per annum, by paying or
25 delivering the money or property to:

1 (1) The minor, if he or she has attained the age of
2 ~~eighteen~~ seventeen years or is married;

3 (2) Any person having the care and custody of the minor
4 with whom the minor resides;

5 (3) A guardian of the minor; or

6 (4) A financial institution incident to a deposit in a
7 federally insured savings account in the sole name of the minor and
8 giving notice of the deposit to the minor.

9 This section does not apply if the person making payment
10 or delivery has actual knowledge that a conservator has been
11 appointed or proceedings for appointment of a conservator of the
12 estate of the minor are pending. The persons, other than the minor or
13 any financial institution under subdivision (4) of this section,
14 receiving money or property for a minor are obligated to apply the
15 money to the support and education of the minor but may not pay
16 themselves except by way of reimbursement for out-of-pocket expenses
17 for goods and services necessary for the minor's support. Any excess
18 sums shall be preserved for future support of the minor, and any
19 balance not so used and any property received for the minor must be
20 turned over to the minor when he or she attains majority. Persons who
21 pay or deliver in accordance with provisions of this section are not
22 responsible for the proper application thereof.

23 Sec. 25. Section 30-2607, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 30-2607 A minor of fourteen or more years but less than

1 eighteen years may prevent an appointment of his or her testamentary
2 guardian from becoming effective, or may cause a previously accepted
3 appointment to terminate, by filing with the court in which the will
4 is probated a written objection to the appointment before it is
5 accepted or within thirty days after notice of its acceptance. An
6 objection may be withdrawn. An objection does not preclude
7 appointment by the court in a proper proceeding of the testamentary
8 nominee, or any other suitable person.

9 Sec. 26. Section 30-2610, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 30-2610 The court may appoint as guardian any person
12 whose appointment would be in the best interests of the minor. The
13 court shall appoint a person nominated by the minor, if the minor is
14 fourteen years of age or older but less than eighteen years, unless
15 the court finds the appointment contrary to the best interests of the
16 minor.

17 Sec. 27. Section 30-2611, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 30-2611 (a) Notice of the time and place of hearing of a
20 petition for the appointment of a guardian of a minor is to be given
21 by the petitioner in the manner prescribed by section 30-2220 to:

22 (1) the minor, if he or she is fourteen or more years of
23 age but less than eighteen years of age;

24 (2) the person who has had the principal care and custody
25 of the minor during the sixty days preceding the date of the

1 petition; and

2 (3) any living parent of the minor.

3 (b) Upon hearing, if the court finds that a qualified
4 person seeks appointment, venue is proper, the required notices have
5 been given, the requirements of section 30-2608 have been met, and
6 the welfare and best interests of the minor will be served by the
7 requested appointment, it shall make the appointment. In other cases
8 the court may dismiss the proceedings, or make any other disposition
9 of the matter that will best serve the interest of the minor.

10 (c) If necessary, the court may appoint a temporary
11 guardian, with the status of an ordinary guardian of a minor, but the
12 authority of a temporary guardian shall not last longer than six
13 months. In an emergency, the court may appoint a temporary guardian
14 of a minor without notice, pending notice and hearing.

15 (d) If, at any time in the proceeding, the court
16 determines that the interests of the minor are or may be inadequately
17 represented, it may appoint an attorney to represent the minor,
18 giving consideration to the preference of the minor if the minor is
19 fourteen years of age or older but less than eighteen years of age.

20 Sec. 28. Section 30-2616, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 30-2616 (a) Any person interested in the welfare of a
23 ward, or the ward, if fourteen or more years of age but less than
24 eighteen years of age, may petition for removal of a guardian on the
25 ground that removal would be in the best interest of the ward. A

1 guardian may petition for permission to resign. A petition for
2 removal or for permission to resign may, but need not, include a
3 request for appointment of a successor guardian.

4 (b) After notice and hearing on a petition for removal or
5 for permission to resign, the court may terminate the guardianship
6 and make any further order that may be appropriate.

7 (c) If, at any time in the proceeding, the court
8 determines that the interests of the ward are, or may be,
9 inadequately represented, it may appoint an attorney to represent the
10 minor, giving consideration to the preference of the minor if the
11 minor is fourteen or more years of age but less than eighteen years
12 of age.

13 Sec. 29. Section 30-2636, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 30-2636 (a) Upon receipt of a petition for appointment of
16 a conservator or other protective order because of minority, the
17 court shall set a date for hearing on the matters alleged in the
18 petition. If, at any time in the proceeding, the court determines
19 that the interests of the minor are or may be inadequately
20 represented, the court may appoint an attorney to represent the
21 minor, giving consideration to the choice of the minor if he or she
22 is fourteen years of age or older but less than eighteen years of
23 age. A lawyer appointed by the court to represent a minor has the
24 powers and duties of a guardian ad litem.

25 (b) Upon receipt of a petition for appointment of a

1 conservator or other protective order for reasons other than
2 minority, the court shall set a date for hearing. Unless the person
3 to be protected has counsel of his or her own choice, the court may
4 appoint an attorney to represent him or her in the proceeding. The
5 court may appoint a guardian ad litem to advocate for the best
6 interests of the person to be protected. If the alleged disability is
7 mental illness, mental deficiency, physical illness or disability,
8 chronic use of drugs, or chronic intoxication, the court may direct
9 that the person to be protected be examined by a physician designated
10 by the court, preferably a physician who is not connected with any
11 institution in which the person is a patient or is detained. The
12 court may send a visitor to interview the person to be protected. The
13 visitor may be a guardian ad litem or an officer or employee of the
14 court.

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

19 Sec. 30. Section 30-2639, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 30-2639 (a) The court may appoint an individual, or a
22 corporation with general power to serve as trustee, as conservator of
23 the estate of a protected person, except that it shall be unlawful
24 for any agency providing residential care in an institution or
25 community-based program or any owner, part owner, manager,

1 administrator, employee, or spouse of an owner, part owner, manager,
2 administrator, or employee of any nursing home, room and board home,
3 assisted-living facility, or institution engaged in the care,
4 treatment, or housing of any person physically or mentally
5 handicapped, infirm, or aged to be appointed conservator of any such
6 person residing, being under care, receiving treatment, or being
7 housed in any such home, facility, or institution within the State of
8 Nebraska. Nothing in this subsection shall prevent the spouse, adult
9 child, parent, or other relative of the person in need of protection
10 from being appointed conservator.

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

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

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

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

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

24 (2) A conservator, guardian of property, or other like
25 fiduciary appointed or recognized by the appropriate court of any

1 other jurisdiction in which the protected person resides;

2 (3) An individual or corporation nominated by the
3 protected person if he or she is fourteen or more years of age but
4 less than eighteen years of age and has, in the opinion of the court,
5 sufficient mental capacity to make an intelligent choice;

6 (4) The spouse of the protected person;

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

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

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

13 (8) A person nominated by the person who is caring for
14 him or her or paying benefits to him or her.

15 (c) When appointing a conservator, the court shall take
16 into consideration the expressed wishes of the person to be
17 protected. A person having priority listed in subdivision (2), (4),
18 (5), (6), or (7) of subsection (b) of this section may nominate in
19 writing a person to serve in his or her stead. With respect to
20 persons having equal priority, the court shall select the person it
21 deems best qualified of those willing to serve. The court, acting in
22 the best interest of the protected person, may pass over a person
23 having priority and appoint a person having lower priority or no
24 priority.

25 (d) In its order of appointment, unless waived by the

1 court, the court shall require any person appointed as conservator to
2 successfully complete within three months of such appointment a
3 training program approved by the State Court Administrator. If the
4 person appointed as conservator does not complete the training
5 program, the court shall issue an order to show cause why such person
6 should not be removed as conservator.

7 Sec. 31. Section 30-2647, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 30-2647 Within ninety days after his or her appointment,
10 every conservator shall prepare and file with the appointing court a
11 complete inventory of the estate of the protected person together
12 with his or her oath or affirmation that it is complete and accurate
13 so far as he or she is informed. The conservator shall provide a copy
14 thereof to the protected person if he or she can be located, has
15 attained the age of fourteen years or older but is less than eighteen
16 years, and has sufficient mental capacity to understand these
17 matters, and to any parent or guardian with whom the protected person
18 resides. The conservator shall keep suitable records of his or her
19 administration and exhibit the same on request of any interested
20 person.

21 Sec. 32. Original sections 30-2603, 30-2607, 30-2610,
22 30-2611, 30-2616, 30-2636, 30-2639, and 30-2647, Reissue Revised
23 Statutes of Nebraska, are repealed.