

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 453

Introduced by DeBoer, 10.

Read first time January 21, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to guardians and conservators; to amend
2 section 30-2630.01, Reissue Revised Statutes of Nebraska, and
3 sections 30-2602.02 and 30-2626, Revised Statutes Cumulative
4 Supplement, 2024; to change requirements for background checks; to
5 harmonize provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 30-2602.02, Revised Statutes Cumulative
2 Supplement, 2024, is amended to read:

3 30-2602.02 (1) A person, except for a financial institution as that
4 term is defined in section 8-101.03 or its officers, directors,
5 employees, or agents or a trust company, who has been nominated for
6 appointment as a guardian or conservator shall authorize the Nebraska
7 State Patrol to submit the fingerprints of such applicants to the Federal
8 Bureau of Investigation and to issue a report to the State Court
9 Administrator that includes the criminal history record information
10 concerning the applicant. The Nebraska State Patrol shall forward
11 submitted fingerprints to the Federal Bureau of Investigation for a
12 national criminal history record information check. The Nebraska State
13 Patrol shall issue a report to the State Court Administrator that
14 includes the criminal history record information concerning the applicant
15 ~~obtain a national criminal history record check through a process~~
16 ~~approved by the State Court Administrator and a report of the results and~~
17 file such report with the court at least ten days prior to the
18 appointment hearing date, unless waived or modified by the court (a) for
19 good cause shown by affidavit filed simultaneously with the petition for
20 appointment or (b) in the event the protected person requests an
21 expedited hearing under section 30-2630.01. The applicant shall pay the
22 actual cost of the fingerprinting and criminal background check.

23 (2) An order appointing a guardian or conservator shall not be
24 signed by the judge until such report has been filed with the court and
25 reviewed by the judge. Such report, or the lack thereof, shall be
26 certified either by affidavit or by obtaining a certified copy of the
27 report. No report or national criminal history record check shall be
28 required by the court upon the application of a petitioner for an
29 emergency temporary guardianship or emergency temporary conservatorship.
30 The court may waive the requirements of this section for good cause
31 shown.

1 **Sec. 2.** Section 30-2626, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 30-2626 (a)(1) If a person alleged to be incapacitated has no
4 guardian and an emergency exists, the court may, pending notice and
5 hearing, exercise the power of a guardian or enter an ex parte order
6 appointing a temporary guardian to address the emergency. The order and
7 letters of temporary guardianship shall specify the powers and duties of
8 the temporary guardian, limiting the powers and duties to those necessary
9 to address the emergency.

10 (2)(i) For purposes of this subdivision (a)(2):

11 (A) Benefits means private or government benefits to which a person
12 alleged to be incapacitated may be entitled; and

13 (B) Covered county means a county containing a city of the
14 metropolitan class or a city of the primary class.

15 (ii) Subject to subsection (k) of this section, if a person alleged
16 to be incapacitated has no guardian and an emergency exists, the court in
17 a covered county may, pending notice and hearing, enter an ex parte order
18 appointing a temporary guardian for the limited purpose of assisting the
19 person in applying for, validating, and facilitating eligibility for
20 benefits.

21 (iii) The limited temporary guardian may access personal and
22 financial records of such person as necessary to apply for, validate, and
23 facilitate eligibility for benefits. The order and letters of limited
24 temporary guardianship shall limit the powers and duties to those
25 necessary to carry out this subdivision (a)(2).

26 (iv) Third parties, including, but not limited to, financial
27 institutions, in possession of such person's financial and personal
28 records related to eligibility for benefits shall provide the limited
29 temporary guardian access to such records. Records to which a limited
30 temporary guardian may be entitled include, but are not limited to,
31 records relating to: Checking, savings, or other bank accounts; household

1 expenses; health, life, or other insurance; wages; pensions; annuities;
2 real property; trusts; burial plans; retirement accounts; stocks and
3 bonds; farm and business equipment; motor vehicles, boats, and motor
4 homes; immigration status; land contracts; promissory notes and loans;
5 social security benefits; credit cards; taxes; or any other asset.

6 (b) When the court takes action to exercise the powers of a guardian
7 or to appoint a temporary guardian under subsection (a) of this section,
8 an expedited hearing shall be held if requested by the person alleged to
9 be incapacitated, or by any interested person, if the request is filed
10 more than ten business days prior to the date set for the hearing on the
11 petition for appointment of the guardian. If an expedited hearing is to
12 be held, the hearing shall be held within ten business days after the
13 request is received. At the hearing on the temporary appointment, the
14 petitioner shall have the burden of showing by a preponderance of the
15 evidence that temporary guardianship continues to be necessary to address
16 the emergency situation. Unless the person alleged to be incapacitated
17 has counsel of his or her own choice, the court may appoint an attorney
18 to represent the person alleged to be incapacitated at the hearing as
19 provided in section 30-2619.

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

24 (d) At the expedited hearing, the court may render a judgment
25 authorizing the temporary guardianship to continue beyond the original
26 ten-day period. The judgment shall prescribe the specific powers and
27 duties of the temporary guardian in the letters of temporary guardianship
28 and shall be effective for a single ninety-day period. For good cause
29 shown, the court may extend the temporary guardianship for successive
30 ninety-day periods.

31 (e)(1) The temporary guardianship shall terminate at the end of the

1 ninety-day period in which the temporary guardianship is valid or at any
2 time prior thereto if the court deems the circumstances leading to the
3 order for temporary guardianship no longer exist or if an order has been
4 entered as a result of a hearing pursuant to section 30-2619 which has
5 been held during the ninety-day period.

6 (2) When the duties of a limited temporary guardian appointed
7 pursuant to subdivision (a)(2) of this section have not been completed
8 within ninety days, the court shall accept notification by such guardian
9 as good cause for extending the limited temporary guardianship for an
10 additional ninety days.

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

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

18 (h) If an appointed guardian is not effectively performing his or
19 her duties and the court further finds that the welfare of the
20 incapacitated person requires immediate action, it may, pending notice
21 and hearing in accordance with section 30-2220, appoint a temporary
22 guardian for the incapacitated person for a specified period not to
23 exceed ninety days. For good cause shown, the court may extend the
24 temporary guardianship for successive ninety-day periods. A temporary
25 guardian appointed pursuant to this subsection has only the powers and
26 duties specified in the previously appointed guardian's letters of
27 guardianship, and the authority of any permanent guardian previously
28 appointed by the court is suspended so long as a temporary guardian has
29 authority.

30 (i) A temporary guardian may be removed at any time. A temporary
31 guardian shall make any report the court requires, except that a

1 temporary guardian shall not be required to provide the fingerprints for
2 the national criminal history record information check or report under
3 section 30-2602.02. In other respects the provisions of the Nebraska
4 Probate Code concerning guardians apply to temporary guardians.

5 (j) The court may appoint the Public Guardian as the temporary
6 guardian pursuant to the Public Guardianship Act.

7 (k)(1) If the Public Guardian is unable to accept appointment as a
8 limited temporary guardian for the purposes described in subdivision (a)
9 (2) of this section because the Public Guardian has exceeded the average
10 ratio described in subsection (2) of section 30-4115, the court shall
11 appoint an individual to serve as a limited temporary guardian.
12 Appointments of such limited temporary guardians shall be subject to the
13 availability of funds appropriated as described in section 81-3141. When
14 such funds have been exhausted in a fiscal year, no further appointments
15 shall be made.

16 (2) An individual appointed as a limited temporary guardian pursuant
17 to subdivision (a)(2) of this section shall apply to the court for
18 expenses and fees for services performed. The court, upon hearing the
19 application, shall fix reasonable expenses and fees, and the county board
20 shall pay such guardian in the full amount determined by the court. The
21 court shall set such expenses and fees at levels that: (i) Are similar to
22 expenses and fees paid to guardians and guardians ad litem for comparable
23 work in other legal proceedings in the county; and (ii) are intended to
24 incentivize qualified individuals to provide high-quality services as
25 limited temporary guardians.

26 (3) A county that has paid expenses and fees as provided in
27 subdivision (k)(2) of this section may apply under section 81-3141 for
28 reimbursement.

29 **Sec. 3.** Section 30-2630.01, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 30-2630.01 (a) If a person alleged to be in need of protection under

1 section 30-2630 has no conservator and an emergency exists, the court
2 may, pending notice and hearing, exercise the power of a conservator or
3 enter an emergency protective order appointing a temporary conservator,
4 who may be the Public Guardian, to address the emergency.

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

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

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

30 (e) The temporary conservatorship shall terminate at the end of the
31 ninety-day period in which the temporary conservatorship is valid or at

1 any time prior thereto if the court deems the circumstances leading to
2 the order for temporary conservatorship no longer exist or if an order
3 has been entered as a result of a hearing pursuant to section 30-2636
4 which has been held during the ninety-day period.

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

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

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

19 **Sec. 4.** Original section 30-2630.01, Reissue Revised Statutes of
20 Nebraska, and sections 30-2602.02 and 30-2626, Revised Statutes
21 Cumulative Supplement, 2024, are repealed.